10 N d

Anno 1629.
PRVDENS.
QVI
PAVCIS

10 N d.

THE FIRST PART OF THE INSTITVTES OF THE LAWES OF ENGLAND.

OR,

A COMMENTARIE vpon LITTLETON, not the name of a Lawyer onely, but of the Law it selfe.

MARTIAL.

Quid te vana iuuant miseræ ludibria Cartæ,
Hoc lege, quod possis dicere iure meum est.

CICERO.

Maior hæreditas venit vnicuiq; nostrum a Iure, & Legibus, quam a Parentibus.

Hæc ego grandæuus posui tibi candide lector.

Authore EDW. COKE *Milite.*

LONDON.
Printed for the Societie of Stationers.

ANNO 1628.

MVSEVM
BRITAN
NICVM

DEO,
PATRIÆ,
TIBI.

Proœmium.

OVR Author, a gentleman of an antient and faire descended Familie *de Littleton*, tooke his name of a Towne so called, as that famous chiefe Iustice Sir *Iohn de Markham*, and diuers of our profession and others haue done. The name and degree of our Author.

Thomas de Littleton Lord of Frankley, had issue *Elizabeth* his only childe, and did beare the Armes of his Ancestours, *viz.* Argent, a Cheuron betweene three Escalop shelles Sable. The bearing hereof is verie antient and honourable, for the Senators of Rome did weare bracelets of Escalop shelles about their armes, and the knights of the honourable Order of Saint *Michaell* in France doe were a coller of gold in the forme of Escalop shelles at this day. Hereof much more might be said, but it belongs vnto others. His Armes. Instituted by *Lewis* the eleuenth, King of France, 9. E. 4. 1469.

With this *Elizabeth* married *Thomas Westcote* Esquire, the Kings seruant in Court, a Gentleman antiently descended, who bare Argent, a Bend betweene two Cotisses Sable, a Bordure engrayled Gules, Bezantie. *Thomas Westcote.*

But she beeing faire and of a noble spirit, and hauing large possessions and inheritance from her Ancestors *de Littleton*, and from her Mother the daughter & heire of *Richard de Quatermains*, and other her ancestors (ready meanes in time to worke her owne desire) resolued to continue the honor of her name (as did the daughter and heire of *Charleton* with one of the sons of *Knightley*, and diuers others) And therfore prudently, whilest it was in her owne power, prouided by *Westcotes* assent before marriage, that her issue inheritable should be called by the name of *de Littleton.*

Littleton. Theſe two had iſſue foure ſonnes, *Thomas*, *Nicholas*, *Edmund*, and *Guy*, and foure daughters.

Our Author bare his Mothers ſurname.

Thomas the eldeſt was our Auhor, who bare his fathers Chriſtian name *Thomas*, and his mothers ſurname, *de Littleton*, and the armes *de Littleton* alſo; and ſo doth his poſteritie beare both name and armes to this day.

Camden.

Camden in his Britania ſaith thus, *Thomas Littleton* alias *Weſtcote* the famous Lawyer, to whoſe treatiſe of Tenures the Students of the Common Law are no leſſe beholding, than the Ciuilians to *Iuſtinians* Inſtitutes.

Pſalm. 92.12. The iuſt ſhall flouriſh like the Palme tree, and ſpread abroad like the Cedars in Libanus.

The dignitie of this faire deſcended Familie *de Littleton*, hath grown vp together, and ſpred it ſelfe abroad by matches with many other antient and honourable Families, to many worthy and fruitfull branches, whoſe poſteritie flouriſh at this day, and quartereth many faire Coates, * and enioyeth fruitfull and opulent inheritances thereby.

* The beſt kind of quartering of Armes.

Of the Inner Temple.

His Reading.

Seriant.

He was of the Inner Temple, and read learnedly vpon the Statute of *W.* 2. *De donis conditionalibus*, which we haue. He was afterward called *Ad ſtatum & gradum Seruientis ad legem*, and was Steward of the Court of the Marſhalley of the Kings houſhold, and for his worthineſſe was made by King *H.*6. his Seriant, and rode Iuſtice of Aſſiſe the Northerne Circuit, which places he held vnder King *E.*4. vntil he in the ſixt yeare of his raigne conſtituted him one of the Iudges of the Court of Common Pleas, and then he rode Northamtonſhire Circuit, The ſame King in the 15. yeare of his raigne, with the Prince, & other Nobles and Gent. of antient blood, honored him with Knighthood of the Bath.

Kings Seriant *Rot Pat.* 32. *H.*6. *Parte* 1. *M.*16.

Mich. 34. *H.*6 *fo.* 3. *a.*

Iudge of the Common Pleas, *Rot Pat.* 6. *E.*4. *Parte* 1. *M.*15.

Knight of the Bath 15. *E.*4.

When he wrote this Booke.

14. *E.*4. *tit. Garranty.* 5. *Lit. Sect.* 692, 729. & 730.

He compiled this Booke when hee was Iudge, after the fourteenth yeare of the raigne of King *E.*4. but the certaine time we cannot yet attaine vnto, but (as we conceiue) it was not long before his death, becauſe it wanted his laſt hand, for that Tenant by Elegit, Statute Merchant, and Staple, were in the table of the firſt printed Booke, and yet hee neuer wrote of them.

The decraſes of his Contemporanes.

(a) He died 27. *H.*6.
(b) He died 39 *H.*6.
(c) Died 11. *E.*4.
(d) Died 16. *H.*7.
(e) Died 7. *E.*4.
(f) Ouerliued our Author.
(g) Suruiued him alſo.
(h) Died. 23. *H.*6.
(i) Suruiued our Author.
(k) Died 32. *H.*6.
(l) Died 18. *H* 6.
(m) Died 20. *H.*6.
(n) Remoued 1. *E.*4.
(o) Remoued 8. *E.*4.
(p) Died 21 *E.*4.

Our Author in compoſing this worke had great furtherance, in that hee flouriſhed in the time of many famous and expert Sages of the Law. (a) Sir *Richard Newton*, (b) Sir *Iohn Priſot*, (c) Sir *Robert Danby*, (d) Sir *Thomas Erian*, (e) Sir *Pierce Arderne*, (f) Sir *Richard Choke*, (g) *Walter Moyle*, (h) *William Paſton*, (i) *Robert Danuers*, (k) *William Aſcough*, and other Iuſtices of the Court of Common pleas. And of the Kings Bench, (l) Sir *Iohn Iune*, (m) Sir *Iohn Hody*, (n) Sir *Iohn Forteſcue*, (o) Sir *Iohn Markham*, (p) Sir *Thomas Billing*: and other excellent men flouriſhed in his time.

And of worldly bleſſings I account it not the leaſt, that in the beginning of my ſtudy of the Lawes of this Realme, the Courts of Iuſtice, both of Equitie and of Law, were furniſhed with men of excellent Iudgement, Grauitie, and Wiſedome; As in the Chancerie Sir *Nicholas Bacon*,

Bacon, and after him Sir *Thomas Bromley*. In the Exchequer Chamber the Lord *Burghley*, Lord high Treasurer of England, and Sir *Walter Mildemay* Chancellour of the Exchequer. In the Kings Bench, Sir *Christopher Wray*, and after him Sir *Iohn Popham*. In the Common Pleas Sir *Iames Dyer*, and after him Sir *Edmund Anderson*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *Iohn Iefferey*, and after him Sir *Roger Manwoode*, men famous (amongst many others) in their seuerall places, and flourished, and were all honoured and preferred by that thrice noble and vertuous Queene *Elizabeth* of euer blessed memorie. Queene *Elizabeth*.
Of these reuerend Iudges, and others their associates, I must ingeniously confesse, that in her raigne I learned many things, which in these Institutes I haue published; And of this Queene I may say, that as the Rose is the queene of flowers, and smelleth more sweetely when it is pluckt from the branch: so I may say and iustifie, that shee by iust desert was the Queene of Queens, and of Kings also, for Religion, Pietie, Magnanimitie, and Iustice; who now by rememberance thereof, since Almightie God gathered her to himselfe, is of greater honour and renowne, than when shee was liuing in this World. You cannot question what Rose I meane: For take the Red or the White, shee was not onely by royall descent, and inherent Birthright, but by Rosial Beautie also, heire to both.

And though we wish by our labours (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Studients of the Law, in their beginning of their studie (to whome the first part of the Institutes is intended) yet principally to my louing friends, the Studients of the honourable and worthie Societies of the Inner Temple, and Cliffords Inne, and of Lyons Inne also, where I was sometime Reader. And yet of them more particularly to such as haue bin of that famous Vniuersitie of Cambridge, *alma mea matre*. And to my much honoured and beloued Allies and Friends of the Counties of Norffolke, my deare and natiue Countrie; and of Suffolke, where I passed my middle age; and of Buckinghamshire, where in my old age I liue. In which Counties, we out of former Collections compiled these Institutes. But now returne we againe to our Author. Inner Temple, Cliffords Inne, Lyons Inne.

He married with *Iohan* one of the daughters and coheires of *William Burley* of Broomescroft Castle in the County of Salop, a Gentleman of antient descent, and bare the Armes of his Family, Argent, a Fesse Checkie Or and Azure, vpon a Lyon Rampant Sable, armed Gules. His marriage.
And by her had three sonnes, Sir *William*, *Richard* the Lawyer, and *Thomas*. His Issue.

In his life time, he, as a louing Father & a wise man, prouided matches for these three sonnes, in vertuous and antient Families (that is to say) for his sonne Sir *William*, *Ellen* Daughter and Coheire of *Thomas Welsh* Esquire, who by her had issue *Iohan* his onely childe, married to Sir *Iohn* The establishment of his posteritie, by the matches of his three sonnes, with Vertue, and good Blood.

Iohn Allen of Tixall Knight: And for the second wife of Sir *William*, *Mary* the Daughter of *William Whittington* Esquire, whose posteritie in Worcestershire flourish to this day. For *Richard Littleton* his second sonne (to whome he gaue good possessions of inheritance) *Alice* daughter & heire of *William Winsbury* of Pilleton-hall in the County of Stafford, Esquire, whose posterity prosper in Staffordshire to this day. And for *Thomas* his third sonne (to whom he gaue good possessions of inheritance) *Anne* daughter and heire of *Iohn Botreaux* Esquire, whose posteritie in Shropshire continue prosperously to this day. Thus aduanced he his posteritie, and his posteritie by imitation of his Vertues haue honoured him.

He gaue possessions of inheritance to his yonger sonnes for their better aduancement.

His last Will.

His Executors.

His Superuisor.

Hee made his last Will and Testament the two and twentieth day of August in the one and twentieth yeare of the raigne of King *Edward* the fourth, whereof he made his three Sonnes, a Parson, a Viccar, and a Seruant of his executors, & constituted superuisor thereof, his true and faithfull friend *Iohn Alcocke* Doctor of Law, of the famous Vniuersitie of Cambridge, then Bishop of Worcester (a man of singular Pietie, Deuotion, Chastitie, Temperance, and holinesse of life) who amongst other of his pious and charitable workes, founded Iesus Colledge in Cambridge, a fit and fast friend to our honourable and Vertuous Iudge.

His Age.
His Departure.

He left this life in his great and good age, on the three and twentieth day of the month of August, in the sayd one & twentieth yere of the raigne of King *Edward* the fourth; For it is obserued for a speciall blessing of Almightie God, that few or none of that profession dye *Intestatus & improles*, Without Will and without Childe; which last Will was proued the Eight of Nouember following in the Prerogatiue Court of Canturburie, for that he had *Bona notabilia* in diuers Dioceses. But yet our Author liueth still in *ore omnium iuris prudentium*.

1.H.7. *fol.*27.
21.H.7. *fol.*32.*b.*

Littleton is named in 1.*H.*7. and in 21.*H.*7. Some doe hold, that it is no error either in the Reporter or Printer; but that it was *Richard* the sonne of our Author, who in those daies professed the Law, & had read vpon the Statute of *W.*2. *quia multi per malitiam*, and * vnto whom his Father dedicated his Booke; And this *Richard* died at Pilleton-hall in Staffordshire, in 9.*H.*8.

*W.*2.2.*cap.*12.
* See *Littleton Sect.* 749.

His Sepulchre.

The bodie of our Author is honourably interred in the Cathedrall Church of Worcester, vnder a faire Tombe of Marble, with his statue or portrature vpon it, together with his owne match, and the matches of some of his Ancestors, and with a memoriall of his principall Titles; and out of the mouth of his statue proceedeth this prayer, *Fili Dei miserere mei*, which he himselfe caused to be made and finished in his life time, and remaineth to this day. His wife *Iohan* Lady *Littleton* suruiued him, and left a great inheritance of her Father, and *Ellen* her Mother (Daughter and heire of *Iohn Grendon* Esquire) and other her Ance-

Anceſtors to Sir *William Littleton* her ſonne.

This worke was not publiſhed in Print, either by our Author himſelfe, or *Richard* his ſonne, or any other, vntill after the deceaſes both of our Author, and of *Richard* his ſonne. For I find it not cited in any Booke or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura breuium*; who publiſhed that Booke of his *Natura Breuium* in 26. *H.* 8. Which worke of our Author in reſpect of the excellencie thereof (by all probabilitie) ſhould haue bin cited in the Reports of the raignes of *E.* 5. *R.* 3. *H.* 7. or *H.* 8. or by S. *Iermyn* in his booke of the Doctor and Studient (which he publiſhed in the three & twentieth yere of *H.* 8.) if in thoſe dayes our Authors Booke had bin printed. And yet you ſhall obſerue, that time doth euer giue greater authoritie to Workes and Writings, that are of great and profound learning, than at the firſt they had. The firſt impreſſion that I find of our Authors Booke was at Roane in France, by *William le Tailier* (for that it was written in French) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* the Printer of King *H.* 8. before the ſaid Booke of *Natura Brenium* was publiſhed; & therefore vpon theſe and other things, that we haue ſeen, we are of opinion, that it was firſt printed about the foure and twentieth yeare of the raigne of King *H.* 8. ſince which time he hath beene commonly cited, and (as he deſerues) more and more highly eſteemed.

When this Worke was publiſhed.

F, N. B. 212, c.

Nota.

When this Worke was firſt imprinted.

Hee that is deſirous to ſee his picture, may in the Churches of Frankley & Hales Owen ſee the graue and reuerend countenance of our Author, the outward man, but hee hath left this Booke, as a figure of that higher and nobler part (that is) of the excellent and rare endowments of his minde, eſpecially in the profound knowledge of the fundamentall Laws of this Realm. He that diligently reads this his excellent Worke, ſhall behold the child & figure of his mind, which the more often he beholds in the viſiall line, and well obſerues him, the more ſhall he iuſtly admire the iudgement of our Author, and increaſe his owne. This only is deſired, that he had written of other parts of the Law, and ſpecially of the rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled, for of him might the ſaying of our Engliſh Poet be verified:

His Picture.

The figure of his Mind.

Chaucer.

There to he could indite and maken a thing,
There was no Wight could pinch at his writing.

So farre from exception, as none could pinch at it. This skill of

Good Pleading.

Logicke.

good pleading he highly in this Worke commended to his ſonne, and vnder his name to all other Students ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a compleat Lawyer (I mean) Logicke, as you ſhal perceiue by reading of theſe Inſtitutes, wherein are obſerued his Sillogiſmes, Inductions, and other arguments, & his Definitions, Deſcriptions, Diuiſions, Ery-

Seneca.

mologies, Deriuations, Significations, & the like. Certain it is that when a great learned man (who is long in making) dyeth, much learning dyeth with him.

The commendation of his Worke. *Lib. 2. fo. 67. Epiſt. 10. li. 10.*

That which we haue formerly written, that this Booke is the ornament of the Common Law, and the moſt perfect and abſolute Worke that euer was written in any humane Science: and in another place, that which I affirmed and tooke vpon mee to maintaine againſt all oppoſites whatſoeuer, that it is a Worke of as abſolute perfection in his kind, and as free from errour, as any Booke that I haue knowne to be written of any humane learning, ſhall to the diligent and obſeruing Reader of theſe Inſtitutes, be made manifeſt, and we by them (which is but a Commentary vpon him) bee deemed to haue fully ſatisfied that, which wee in former times haue ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to vs, is, that by this excellent Worke, which hee had ſtudiouſly learned of others, he faithfully taught all the profeſſors of the Law in ſucceeding ages. The Victory is not great to ouerthrow his oppoſites, for there was neuer any learned man in the Law, that vnderſtood our Author, but concurred with me in his commendation.

Cicero.

Habet enim iuſtam venerationem quicquid excellit, For whatſoeuer excelleth hath iuſt honour due to it. Such, as in words haue endeauoured to offer him diſgrace, neuer vnderſtood him, and therfore wee lea ue them in their ignorance, and wiſh that by theſe our Labours, they may know the truth and be conuerted. But herein

Ariſtotle.

wee will proceede no further. For *Stultum eſt abſurdas opiniones accuratius refellere*, It is meere folly to confute abſurd opinions with too much curioſitie.

And albeit, our Author in his three Bookes cites not many Authorities, yet he holdeth no opinion in any of them, but is proued and approoued by theſe two faithfull witneſſes in matter of Law, Authority, and Reaſon. Certaine it is, when he raiſeth any queſtion, and ſheweth the reaſon on both ſides, the latter opinion is his owne, and is conſonant to Law. Wee haue knowne many of

his

his caſes drawne in queſtion, but neuer could find any iudgement giuen againſt any of them, which wee cannot affirme of any other Booke or Edition of our law. In the raigne of our late Soueraign Lord King *Iames* of famous and euer bleſſed memory, It came in queſtiō vpon a demurrer in Law, whether the releas to one treſpaſſer ſhould be auaileable or no, to his companion. Sir *Henrie Hobart* that honourable Iudge, and great Sage of the Law, and thoſe reuerend and learned Iudges *Warburton*, *Wynch*, and *Nichols* his companions, gaue iudgement according to the opinion of our Author, and openly ſayd, That they owed ſo great reuerence to *Littleton*, as they would not haue his Caſe diſputed or queſtioned, and the like you ſhall find in this part of the Inſtitutes. Thus much (though not ſo much as is due) haue we ſpoken of him, both to ſet out his life, becauſe he is our Author, and for the imitation of him by others of our profeſſion.

Nota.

Mich. 13. Iac. in Communi Banc. inter Cock & Ilmours.

We haue in theſe Inſtitutes endeauoured to open the true ſence of euery of his particular caſes, & the extent of euery of the ſame either in expreſſe words, or by implication, and where any of them are altered by any latter Act of Parliament, to obſerue the ſame, and wherein the alteration conſiſteth: Certaine it is that there is neuer a period nor (for the moſt part) a word, nor an (&c.) but affordeth excellent matter of learning. But the module of a Preface cannot expreſſe the obſeruations, that are made in this worke, of the deepe Iudgement and notable Inuention of our Author. Wee haue by compariſon of the late and moderne impreſſions with the originall print, vindicated our Author from two iniuries; firſt from diuers corruptions in the late and moderne prints, and reſtored our Author to his owne. Secondly, From all additions, and incroachments vpon him, that nothing might appeare in his worke but his owne.

What is indeauoured by theſe Inſtitutes.

Our hope is, that the yong Studient, who heretofore meeting at the firſt, and wraſtling with as difficult termes and matter, as in many yeares after, was at the firſt diſcouraged (as many haue bin) may by reading theſe Inſtitutes, haue the difficultie and darkeneſſe both of the Matter and of the Termes and Words of Art in the beginnings of his Studie facilitated, and explained vnto him, to the end hee may proceed in his Studie cheerefully, and with delight; and therefore I haue tearmed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute, and inſtruct the ſtudious, and guid him in a readie way to the knowledge of the nationall Lawes of England.

The benefit of theſe Inſtitutes.

Wherefore called Inſtitutes.

Wherefore published in English.

This part wee haue (and not without preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the nationall Lawes of the Realme; a worke neceſſarie, and yet heeretofore not vndertaken by any, albeit in all other profeſſions there are the like. We haue left our Author to ſpeake his owne language, and haue tranſlated him into Engliſh, to the end that any of the Nobilitie, or Gentrie of this Realme, or of any other eſtate, or profeſſion whatſoeuer, that will be pleaſed to read him and theſe Inſtitutes, may vnderſtand the language wherein they'are written.

I cannot coniecture that the generall communicating of theſe Lawes in the Engliſh tongue can worke any inconuenience, but introduce great profit, ſeeing that *Ignorantia iuris non excuſat*, Ignorance of the Law excuſeth not.

Regula.

36.E.3.cap.15.

And heerein I am iuſtified by the Wiſedome of a Parliament the words whereof be, *That the Lawes and Cuſtomes of this Realme the rather ſhould bee reaſonably perceiued and knowne, and better vnderſtood by the tongue vſed in this Realme, and by ſo much euery man might the better gouerne himſelfe without offending of the Law, and the better keepe, ſaue, and defend his heritage and poſſeſſions. And in diuers Regions and Countries where the King, the Nobles, and other of the ſayd Realme haue beene, good gouernance and full right is done to euerie man, becauſe that the Lawes and Cuſtomes bee learned and vſed in the Tongue of the Countrey*: as more at large by the ſaid Act, and the puruiew thereof may appeare, *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to bee wiſer than the Law.

Regula.

Our Authours kind of French.

And true it is that our Bookes of Reports and ſtatutes in auntient times were written in ſuch French, as in thoſe times was commonly ſpoken and written by the French themſelues. But this kind of French that our Author haue vſed is moſt commonly written and read, and very rarely ſpoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (hauing beene ſo long accuſtomed) ſhould bee without any profit, but not without great danger and difficultie: For ſo many antient Termes and Words drawne from that legall French, are growne to bee *Vocabula artis*, Vocables of Art, ſo apt and ſignificant to expreſſe the true ſence of the Laws, and are ſo wouen into the Laws themſelues, as it is in a manner impoſſible to change them, neither ought legall Termes to be changed.

36.E.3. *vbi ſupra.*

In Schoole Diuinitie, and amongſt the Gloſſographers and

Interl-

Interpreters of the Ciuile and Cannon Lawes, in Logicke and in other liberall Sciences, you ſhall meet with a whole Armie of words, which cannot defend themſelues *in Bello Grammaticali*, in the Grammaticall Warre, and yet are more ſignificant, compendious, and effectuall to expreſſe the true ſence of the matter, than if they were expreſſed in pure Latine.

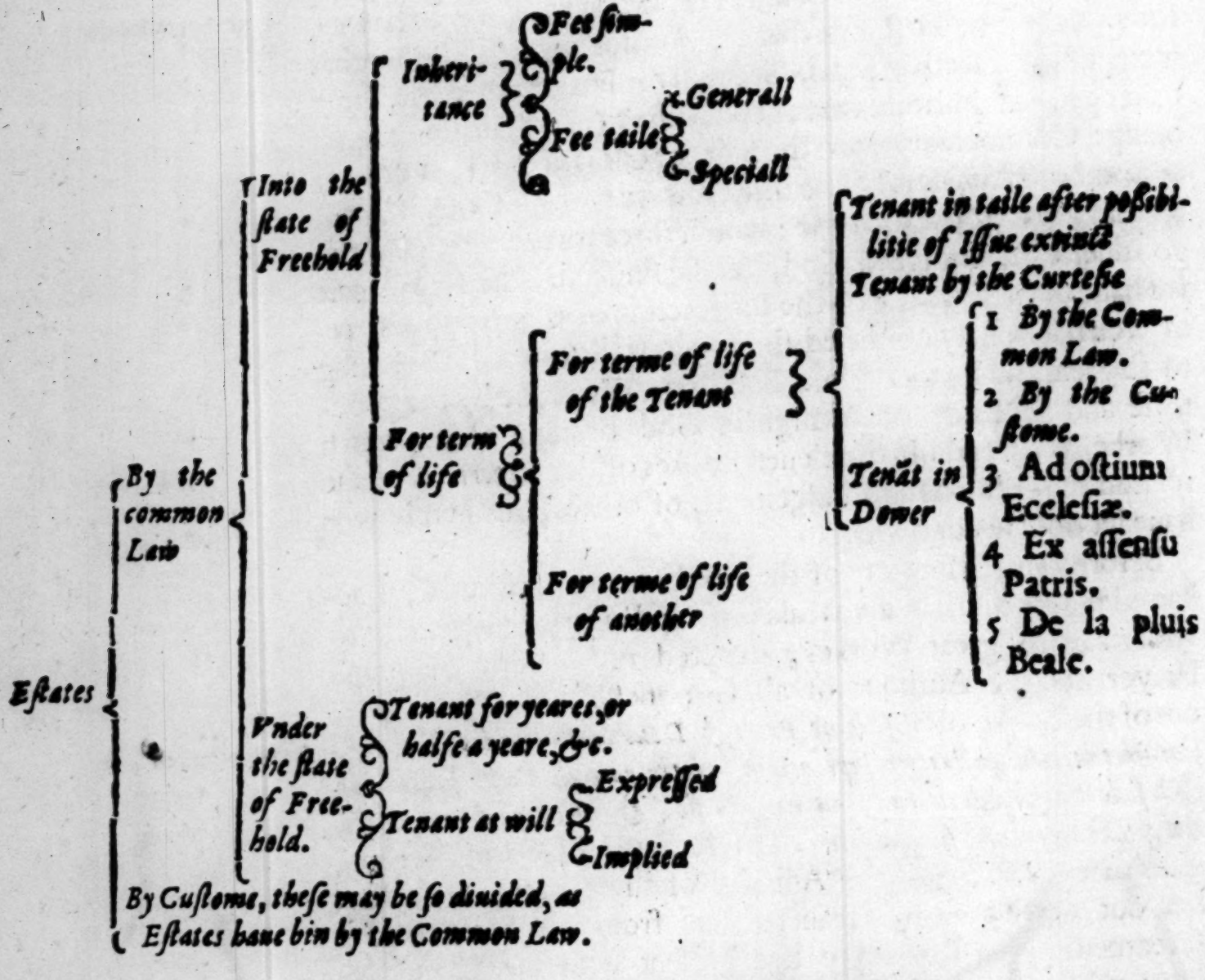
This Worke we haue called The firſt part of the Inſtitutes, for two cauſes: Firſt, For that our Author is the firſt Booke that our Studient taketh in hand. Secondly, For that there are ſome other parts of Inſtitutes not yet publiſhed, (*viz.*) The ſecond part being a Commentary vpon the Stat. of *Magna Carta*, *Weſtm.* 1. and other old Statutes. The third part treateth of Criminall cauſes and Pleas of the Crowne: which three parts we haue by the goodneſſe of Almightie God alreadie finiſhed. The fourth part we haue purpoſed to be of the Iuriſdiction of Courts; but hereof wee haue onely collected ſome materialls towards the raiſing of ſo great and honourable a Building. Wee haue by the goodneſſe and aſſiſtance of Almightie God brought this twelfth Worke to an end: In the eleuen Bookes of our *Reports* we haue related the opinions and iudgements of others; but herein wee haue ſet downe our owne.

Wherefore called the firſt part.

Before I entred into any of the ſaid parts of our Inſtitutes, I acknowledging myne owne weakeneſſe and want of iudgement to vndertake ſo great Workes, directed my humble Suite and Prayer to the Authour of all Goodneſſe and Wiſedome, out of the Booke of *Wiſedome*; *Pater & Deus Miſericordiæ, Da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœlis ſanctis tuis & a ſede magnitudinis tuæ, vt mecum ſit, & mecum laboret, vt ſciam quid acceptum ſit apud te*; Oh Father and God of Mercie, giue mee Wiſedome, the Aſſiſtant of thy Seates; Oh, ſend her out of thy holy Heauens, and from the Seate of thy Greatneſſe, that ſhee may bee preſent with mee, and labour with mee, that I may know what is pleaſing vnto thee, *Amen.* L. Sap. ca. 9. ver. 4. 10.

Our Authour hath diuided his whole Worke into three Bookes: In his firſt hee hath diuided Eſtates in Lands and Tenements, in this manner; For, *Res per diuiſionem melius aperiuntur.* Bracton.

A Figure of the diuision of Possessions:



Our Authour dealt onely with the Estates and termes aboue sayd; Somewhat Wee shall speake of Estates by force of certaine Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Authour intended to haue written) and likewise to Executours to whome lands are deuised for payment of Debts, and the like.

And

And when the Reader ſhall in any part of this Worke finde no perfect ſence, or the Caſe apparantly againſt Law, or miſquotations, or incongrue Latyne, or falſe Orthographie, or the like; I ſhall deſire of him three things:

Firſt, Before hee enter (vpon the firſt apprehenſion thereof) into any euill conceit, That hee would aduiſedly peruſe ouer the *Errata* in the end of this Booke, & correct his booke accordingly, and then I am perſuaded he ſhall in many things receiue ſatisfaction.

Secondly, That he will impute no more or greater faults to the Printer, than he deſerues, in reſpect I was in the Countrey during all the time of the impreſſion hereof, and for that hee might eaſily miſtake my hand writing, beeing in many places not eaſie to be read but by him that was well acquainted therewith: and the rather, becauſe the *Errata* be not ſuch, (ſauing a verie few) but that the iudicious Reader vpon the Context and other parts of this Worke, will eaſily vnderſtand my meaning.

Thirdly, That the learned Reader will not conceiue any opinion againſt any part of this painefull and large Volume, vntill he ſhal haue aduiſedly read ouer the whole, and diligently ſearched out and well conſidered of the ſeuerall Authorities, Proofes, and Reaſons which wee haue cited and ſet downe for warrant and confirmation of our opinions throughout this whole Worke.

Regula.
Intiuile eſt parte vna perſpecta, tota re non cognita, de ea iudicare.

Myne aduice to the Studient is, That before hee read any part of our Commentaries vpon any Section, that firſt hee read againe and againe our Authour himſelfe in that Section, and doe his beſt endeauours, firſt of himſelfe, and then by conference with others, (which is the life of Studie) to vnderſtand it, and then to read our Commentarie thereupon, and no more at any one time, than hee is able with delight to beare away, and after to meditate thereon, which is the life of reading. But of this Argument we haue for the better direction of our Studient in his Studie, ſpoken in our Epiſtle to our firſt Booke of *Reports*.

And albeit the Reader ſhall not at any one day (doe what he can) reach to the meaning of our Author, or of our Commentaries,

taries, yet let him no way diſcourage himſelfe, but proceed; for on ſome other day, in ſome other place, that doubt will bee cleared. Our Laboures herein are drawne out to this great Volume, for that our Author is twice repeated, once in French, and againe in Engliſh.

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The true portraiture of Iudge Littleton the famous English Lawyer

THE FIRST PART of the Institutes of the LAWES of *England*.

CHAP. I. *Fee simple.* Sect. I.

TEnant en Fee simple ē celuy que ad terres ou tenemēts a tener a luy et a ses heires a touts iours. Et est appel en Latyn, Feodum simplex, quia feodum idem est quod hæreditas, & simplex idem est qđ legitimum vel purum, & sic feodum simplex idem est quod hæreditas legitima, vel hæreditas pura. Car si home voile purchaser terres ou tenements ē Fee simple, il couient ỏ auer ceux parolx ē son purchase, A auer et tener a luy et a ses hẽes: Car ceux parols (Ses heires) font lestate dẽheritance. Car si home

TEnant in Fee simple is hee which hath lands or Tenements to hold to him and his heires for euer. And it is called in Latine, *Feodum simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much to say, as lawfull or pure. And so *Feodum simplex* signifies a lawfull or pure Inheritance. For if a man would purchase lands or tenements in Fee simple, it behooueth him to haue these words in his purchase, To haue and to hold to him and to his Heyres; for these words (His Heires) make the Estate of the Inheritance. For if a man pur-

Tenant. In Latine Tenens is deriued of the verb Teneo, & hath in the law fiue significations. 1. It signifies the estate of the land, as whē the tenant in a præcipe of land, pleads, Qđ non tenet, &c. this is as much as to say, That hee hath not seisin of the Freehold of the Land in question. And in this sence doth our author take it in this place: & therfore he saith, tenant in fee simple is he which hath lāds to hold to him & his heirs. 2. It signifieth the Tenure or the seruice whereby the lands & tenements bee holden. And in this sence it is said in the writ of Right, quę clamat tenere de te p liberū seruitium, &c. And in this signification he is called a Tenant or holder, because al the lands & tenements in England in the hands of subiects, are holden mediately or immediately of

Vid Sect. 85.

8. H. 7, 12. 18. E. 3. 35. 24. E. 3. 65. 66. 44. E. 3. 5. 48. E. 3. 9

Mir. des Iu. ie ca. 1. §. 1. Custom de Normandy cap. 28.

of the King. For in the law of England we haue not properly Allodium, That is, any Subiects land that is not holden, vnlesse you will take Allodium, for Ex solido, as it is often taken in the Booke of Domesday: and tenants in Fee simple are there called Asodarij or Aloarij. And hee is called a Tenant, because hee holdeth of some superior Lord by some seruice. And therefore the King in this sence cannot be sayd to be a Tenant, because he hath no superior but God almightie; Prædium domini regis est directum dominium, cuius nullus Author est nisi Deus. And as Bract. saith, Omnis quidem sub eo, & ipse sub nullo, nisi tantum sub Deo. The Possessions of the King are called Sacra Patrimonia, & Dominica Coronę regis. But though a Subiect hath not properly Directum yet hath he Vtile Dominium. Of these Tenants our Author speaketh in his second Booke. Also Tenere signifieth performance; as in the Writ of Couenant, Quod teneat conuentionem, that is, That hee hold or performe his Couenant. And likewise it signifieth to be bound, as it is sayd in euery common Obligation, teneri & firmiter obligari. Lastly, It signifieth to deeme or iudge, as in 38.E.3.ca.4. It shall be holden for none (that is) iudged or deemed for none; and so we commonly say, it is holden in our Bookes. And these seuerall significations doe properly belong to our Tenant in Fee simple. For he hath the estate of the land, he holdeth the land of some superiour Lord, and is to performe the seruices due, and thereunto he is bounden by doome and iudgement of Law. Of the seuerall estates of Land our Author treateth in his first Booke, and beginneth with Fee simple, because all other estates and interests are deriued out of the same.

Lest de 16 R.2. cap 5. 14. El. Dy. 313. a Li. 1. 47. in Alton Woods case.

Bract. li. 1. ca. 8.

purchase terres per ceux parolx, A auer et tener a luy a touts iours: ou p tiels parols, A auer et tener a luy & a ses assignes a touts iours; en ceux deux cases il ny ad estate forsque pur terme de vie, pur ceo que il fault ceux pols (ses hẽes) les queux parolx tantsolement font iestate denheritance en touts feoffments et Grants.

chase Lands by these words, To haue and to hold to him for euer; or by these words, To haue and to hold to him and his Assignes for euer: in these two cases hee hath but an Estate for term of life, for that there lacke these words (His Heyres) which words onely make an Estate of Inheritance in all Feoffments and Grants.

Brit. fo. 83. 207. 208. Flet. li. 5 c. 5. & li. 3. c. 8. Brac. l. 4. 263

Domesday. Mir des Iust. ca. 2 § 15. 17. Bract. li. 2. cp. 5. 6, 7. Brit. ca. 34. fo 89. Flet lib. 3. ca. 2. 8. & 9. & li. 5 ca. 5.

(a) Bract. f. 263. & 207. Pl. Com. in Walsh case. 7. H. 4. 46. 8. H. 4. 15. 18. H 8. 3. b 27. ass. 33. 18. Ass. 5. 18 Edw. 3. 46. 24. E. 3. 28. 9. Edw. 4. 18. 16. H. 7. 4. 10. E. 3. Account. 56. 22. R. 2. Dise 50 12. Ed. 4. 3. 15. E 4 8. Dy. 8. El. 252. 253 12. H 8. 8. 4. H 7. 2. The Case of a person which hath a qualified fee see in the title of Dise. * V. Sect. 4.

(b) Bra. li. 4. f. 263. Flet. l. 5. ca. 5. Brit. fo. 205. 207.

(c) 2. ass. p. 4. 12. Ass. 38. 12. E. 3. tit. Hors de son fee 28. 28. Ass. 41. 7. H. 4. 30. 2. H. 6. 1.

Rot pat. 13. E. 1

¶ *Fee simple.* Fee commeth of the French Fief, (i.) prædium beneficiarium, and legally signifieth Inheritance, as our Author himselfe hereafter expounded it. And Simple is added, for that it is discendible to his heires generally, that is, simply, without restraint to the heyres of his bodie, or the like. Feodum est quod quis tenet ex quacunque causa, siue sit tenementum, siue redditus, &c. In Domesday it is called Feudum. (a) Of Fee simple it is commonly holden that there be three kinds, viz. Fee simple absolute, Fee simple conditionall, & Fee simple qualified, or a base fee. But the more genuine & apt diuision were to diuide Fee, that is, Inheritance, into three parts, viz. Simple or absolute, Conditionall, and Qualified or base. For this word (Simple) properly excludeth both conditions and limitations that defeat or abridge the fee.* Herby it appeareth, that Fee in our legall vnderstanding signifieth, that the land belongs to vs and our heyres, in respect whereof the owner is sayd to be seised in fee, & in this sence the King is sayd to be seised in fee. (b) It is also taken, as it is holden of another by seruice, and that belongeth onely to the Subiect; Item dicitur feodum alio modo eius qui alium feoffat, & qd' quis tenet ab alio, vt si sit qui dicat talis tenet de me tot feoda per seruitium militare. And Fleta saith, Poterit vnus tenere in feodo quoad seruitia, sicut dominus capitalis, & non in Dominico, alius in feodo & dominico, & non in seruitio, sicut libere tenens alicuius. (c) And therefore if a stranger claime a Seigniorie, & distreyne and auow for the seruice, the Tenant may plead, That the tenancy is extra feodum, &c. of him (that is) out of the Seigniorie, or not holden of him that claimeth it; but he cannot plead Hors de son fee, vnlesse hee take the tenancie, that is, the state of the land vpon him. Of Fee in the first sence, our Author treateth in this first Booke; and as it is taken in the second sence, in his second book: & of the third you shal read in our Author, Sect. 13. 643. 644. 645 & plentifully in our books quoted in the margent.

¶ *Terres ou Tenements.* Here is to bee obserued, That a man may haue a Fee simple in three kinds of hereditaments, viz. Reall, Personall, and Mixt: Real, as Lands and Tenements, whereof our Author here speaketh. Personall, as King Edward the first in the thirteenth yeare of his raigne, Concessit Edmundo fratri suo charissimo, quod ipse & hæredes sui habeant ad requisitionem suam in Cancellaria nostra & hæredum nostrorum Iusticiarios

ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ' foreſtæ tenend, &c. In this caſe the grantee and his heires had a perſonall inheritance in making of a requeſt to haue Letters patents of Commiſſion to haue Iuſtices aſſigned to him to heare and determine, of the pleas of the foreſts, and concerneth neither lands or tenements. And ſo it is if an Annuity be granted to a man and his heires, It is a fee ſimple perſonall, & ſic de ſimilibus. And laſtly hereditaments mixt both of the realty and perſonalty. As the Abbot of whitbye in the County of Yorke hauing a foreſt of the gift of William of Percye founder of that Abby, and by the Charters of king Iohn and of other his progenitors, king Henry the third did graunt Abbati & conuentui de Whitbye quod ipſi & eorum ſucceſſores imperpetuũ habeant viridarios ſuos proprios de libertate ſua de Whitbye eligend de cetero in pleno com Eborum prout moris eſt ad reſponſiones & preſentationes, faciend de tranſgreſſionibus quas amodo fieri continget de venatione infra metas foreſtæ ſuæ de Whitbye quam habent ex donatione Willi. de Percey & Alani de Percey, filij eius & redditione & conceſſione domini Iohanis quondam regis Angliæ patris noſtri, & confirmatione noſtra coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ in partibus illis & non alibi ſicut viridarij foreſtæ noſtræ huiuſmodi reſponſiones & preſentationes facere debent & conſueuerunt. Et ſi contingat aliquos forinſicos qui non ſunt de libertate predictorum Abbatis & conuentus tranſgreſſionem facere de venatione infra metas foreſtæ predictæ quos predicti viridarij attachiare non poſſunt. Volumus & cõcedimus pro nobis & heredibus noſtris quod huiuſmodi tranſgreſſores, per Iuſticiarios foreſtæ noſtræ vltra Trentam attachientur ad preſentationem viridariorũ predict ad reſpondendũ inde coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ noſtræ in partibus illis cum ibid. ad placitandum venerint prout ſecundum aſſiſam & conſuitudinem foreſtæ noſtræ fuer faciend. which Charter was pleaded vpon the Clayme made by the Abbot of whitbye before Willoughby, Hungerford, and Hanbury, Iuſtices in Eire in the foreſt of Pickering, which Eire began Anno 8. E. 3. And theſe before them were allowed. And when the King createth an Earle of ſuch a County or other place, To hold that Dignity to him and his heires, This Dignity is perſonall, and alſo concerneth lands and tenements. But of this matter more ſhalbe ſaid in the next Chapter, Sect. 14. & 15.

Ro. Pat. an. 47. H. 3. Iſth. Pickering. 8. E. 3. Ro. 42.

¶ *Et eſt appel en Latine feodum ſimplex quia feodũ idem eſt, quod hereditas.* Here Littleton himſelfe teacheth the ſignification of feodum, according to that which hath beene ſaid, which only is to be applied to fee ſimple pure and abſolute. And this and all his other interpretations of words and Etymologies throughout all his three bookes (wherein the ſtudious reader will obſerue many) are perſpicuous, and euer per notiora & nunquam ignotum per ignotius, and are moſt neceſſary, for ignoratis terminis ignoratur & ars.

Bract. lib. 4. cap. 9. fo. 263. Britt. ca. 32. & 79. For interpretation of words and Etimologies. Vid. Sect. 9. 18. 95. 116. 119. 135. 154. 164. 174. 184. 186. 194. 204. 234. 267. 258. 332. 337. 424. 520. 592. 645. 689. 733.

¶ *Simplex idem eſt quod legittimum vel purũ*, hereof he treateth only in this place. And Litt: ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur quia ſine plicis & purũ dicitur, quod eſt merũ & ſolum ſine additione. Simplex donatio & pura eſt vbi nulla addita eſt conditio ſive modus, ſimplex enim datur quod nullo additamento datur.

Bract. lib. 2. ca. 39. fo. 92. 62. b. lib. 4. ca. 28. Fleta. lib. 3. ca. 8. Bract. lib. 2. ca. 5. & 6. Britt. ca. 34.

¶ *Hereditas legitima vel hereditas pura.* And therefore it is wel ſaid, quod donationũ alia ſimplex & pura, quæ nullo iure civili vel naturali cogente, nullo precedente metu vel interueniente ex mera gratiutaque libertate donantis procedit, & vbi nullo caſu velit donator ad ſe reuerti quod dedit, alia ſub modo conditione vel ob cauſam, in quibus caſibus non proprie ſit, donatio, cum donator id ad ſe reuerti velit, ſed quedam potius feodalis dimiſſio, alia abſoluta & larga, alia ſtricta, & coarctata, ſicut certis heredibus quibuſdam a ſucceſſoribus excluſis, &c. And therefore ſeeing Fee ſimple is hereditas legittima vel pura, it plainly confirmeth, that the diuiſion of Fee is by his Authority rather to be diuided as is afore ſaid then fee ſimple. And he ſaith wel in the diſiunctiue legittima vel pura, for euery fee ſimple is not legittimum. For a diſſeiſor, abator, intruder, vſurper, &c. haue a fee ſimple, but it is not a lawfull fee. So as euery man that hath a fee ſimple, hath it either by right or by wrong. If by right, then he hath it either by purchaſe, or diſcent. If by wrong, then either by diſſeiſin, intruſion, abatement, vſurpation, &c. In this Chapter he treateth only of a lawfull fee ſimple, and deuideth the ſame as is afore ſaid.

Fleta. lib. 3. ca. 2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts. perſons naturall created of God, as I. S. I. N. &c. and perſons incorporate or politique created by the policie of man (and therefore they are called bodies politique) and theſe be of two ſorts, viz. either ſole, or aggregate of many: againe aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men haue capacitie to purchaſe but not ability to hold. Some capacitie to purchaſe and abilitie to hold or not to hold, at the election of them or others. Some capacitie to take and to hold. Some neither capacitie to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vid. Sect. 57. Who haue abilitie to grant. Perſons capable of purchaſe.

If an alien Chriſtian or infidell purchaſe houſes, Lands, tenements, or hereditaments to him and

11. Eliz. Dier. 283. 11. H. 4. 20. & 26. 7. E. 4. 29.

and his heires, albeit he can haue no heires, yet he is of capacitie to take a fee simple but not to hold. For vpon an office found, the king shall haue it by his prerogatiue of whom soeuer the land is holden. And so it is if the alien doth purchase land and die, the law doth cast the freehold, and inheritance vpon the King. If an alien purchase any estate of freehold in houses, lands, tenements, or hereditaments, the King vpon office found shall haue them. If an alien be made Denizen and purchase lands, and die without issue, the lord of the fee shall haue the escheat, and not the King. But as to a lease for yeares, there is a diuersitie betweene a lease for yeares of a house for the habitation of a merchant stranger being an alien, whose King is in league with ours, and a lease for yeares of lands, meadowes, pastures, woods, and the like. For if he take a lease for yeares of lands, meadowes, &c. vpon office found, the King shall haue it. But of a house for habitation he may take a lease for yeares as incident to Commercery, for without habitation he cannot merchandize or trade. But if he depart or relinquish the realme, the King shall haue the lease. So it is if he die possessed thereof, neither his Executors or Administrators shall haue it but the King, for he had it only for habitation as necessary to his trade or traffique, and not for the benefit of his Executor or administrator. But if the alien be no merchant, then the King shall haue the lease for yeares, albeit it were for his habitation, and so it is if he be an alien enemie. And all this was so resolued by the Iudges assembled together for that purpose in the case of Sir Iames Crofi, Pasch 29, of the raigne of Queene Elizabeth. Also if a man commit felonye, and after purchase lands, and after is attainted, he had capacity to purchase, but not to hold it, for in that case the Lord of the fee shall haue the Escheat. And if a man be attainted of felony, yet he hath capacitie to purchase to him and to his heires, albeit he can haue no heire, but he cannot hold it, for in that case the King shall haue it by his prerogatiue, and not the Lord of the fee, for a man attainted hath no capacitie to purchase (being a man civiliter mortuus) but only for the benefit of the King, no more then the alien nee hath. If any sole Corporation or aggregate of many, either Ecclesiasticall or temporall (for the words of the statute be Si quis religiosus vel alius) purchase Lands or Tenements in fee, they haue capacity to take but not to retayne, (vnlesse they haue a sufficient Licence in that behalfe) for within the yeare after the alienation, the next Lord of the fee may enter, and if he doe not, then the next immediate lord from time to time to haue halfe a yeare, and for default of all the mesne Lords, then the King to haue the land so alienes for euer, which is to be vnderstood of such inheritance as may be holden. But of such inheritances as are not holden as Villeins, rents-charges, commons, and the like, the King shall haue them presently by a fauourable interpreration of the statute. An Annuity graunted to them is not mortmaine, because it chargeth the person only. Some haue said that it is called mortmaine Manus mortua, quia possessio eorum est immortalis, manus pro possessione, & mortua pro immortali, and the rather for that by the lawes and statutes of the realme, all Ecclesiasticall persons are restrained to alien. Others say it is called manus mortua per Antiphrasin, because bodies politique and corporate neuer die. Others say that it is called Mortmaine by resemblance to the holding of a mans hand that is ready to die, for that he then holdeth he letteth not goe till he be dead. These and such others are framed out of wit and inuention, but the true cause of the name, and the meaning thereof, was taken from the effects, as it is expressed in the statute it selfe; per quod quæ servitia ex huiusmodi feodis debentur, & quæ ad defensionem regni ab initio provisa fuerunt indebite subtrahuntur & capitales domini escheatas suas amittunt, so as the lands were said to come to dead hands as to the Lords, for that by alienation in Mortmaine, they lost wholly their escheats, and in effect their knights services for the defence of the Realme, wards, Marriages, Reliefes, and the like, and therefore was called a dead hand, for that a dead hand yeeldeth no seruice.

32. H. 6. 23. Pl. Com. 483.

5. Mar. Br. tit. Denizen 22.

Pasch. 29. Eliz. in Sir Iames Crofts case.

40. Ass pl. 2. 49. E. 3. 11.

Magna Carta. ca. 36.
7. E. 1. de religiosis.
W. 2. 13. E. 1. ca. 33.
15. R. 2. ca. 5. 23. H. 8. ca. 10
39. Eliz. ca. 5.
23. H. 3. Ass. 436.
20. Ass. p 17. Brit. f. 32.
Fleta. lib. 3. cap. 4. & 5.
19. E. 2. tit. Vil. 34.
29. E 3. Ibid. 13 21. E. 3. 5.
4. H 6. 9 19 H. 6. 63 65.
3. E. 4 14 19. E. 3 Mortm. 8
34. H. 6. 37. 19. H. 6. 63.
7. E. 4. 14.
Pl. Com. 193. in Wrotesleyes case.

Le statut de Religiosis. 7. E. 1.

I passe ouer Villeins or Bondmen, who haue power to purchase lands, but not to reteyne them against their Lords, because you shall reade at large of them in their proper place in the Chapter of Villenage.

In infant or minor (whom we call any that is vnder the age of 21. yeares) haue without consent of any other, capacitie to purchase, for it is intended for his benefit, and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alleaged, waiue or disagree to the purchase, and so may his heires after him, if he agreed not thereunto after his full age.

A man of non sane memory may without the consent of any other purchase lands, but hee himselfe cannot waiue it, but if he dis in his madnesse, or after his memorie recouered without agreement thereunto, his heire may waiue and disagree to the state, without any cause shewed, and so of an Ideot. But if the man of non sane memory recouer his memory, and agree vnto it, it is vnauoydable.

43. Ass. p. 23.

If an Abbot purchase lands to him and his successors without the consent of his Couent, he himselfe cannot waiue it, but his successor may vpon iust cause shewed, as if a greater rent were reserued thereupon then the value of the land, or the like, but he cannot waiue it vnlesse it be vpon iust cause, & sic de similibus prælatus Ecclesiæ suæ condition̄ meliorare potest, deteriorare nequit. And in another place he saith, Est enim Ecclesia eiusdem conditionis, quæ fungitur vice minoris.

Brak. lib. 2. fo. 12. & 32.

But

But no ſimilie holds in euery thing, according to the ancient ſaying, Nullum ſimile quatuor pedibus currit. An Hermophzadite may purchaſe according to that Sexe which preuaileth. A feme Couert cannot take any thing of the gift of her huſband, but is of capacitie to purchaſe of others without the conſent of her huſband. And of this opinion was Littleton in our bookes, and in this booke Sect.677. but her huſband may diſagree thereunto, and deueſt the whole eſtate, but if he neither agree nor diſagree, the Purchaſe is good, but after his death, albeit her huſband agreed thereunto, yet ſhe may without any cauſe to be alleaged waiue the ſame, and ſo may her heires alſo, if after the deceaſe of her huſband ſhe her ſelfe agreed not thereunto.

1.H.7.16.7. H.4.17.
18.H.6.8.39.E.3.30.
15.E.4.fol.1.b.27.H.8.24

A wife, (Vxor) is a good name of Purchaſe without a Chriſtian name, and ſo it is, if a Chriſtian name be added and miſtaken, as Em for Emelyn, &c for vtile per inutile non vitiatur. But the Queene, the conſort of the King of England, is an exempt perſon from the king by the Common law, and is of abilitie, and capacitie to Purchaſe and grant without the King. Of which ſee more at large, Sect.206.

A name of purchaſe.
2.H.4.25. 1.H.5.8.
46.E.3.22. 12.Aſſ.16.
30.E.3.18.1.Aſſ.11.
11.H.4.33.9.E.4.49.
13.E.3.Eſſoyne.231.
F.N.B.97.a.

The Pariſhioners or Inhabitants, or probi homines of Dale, or the Churchwardens, are not capable to Purchaſe lands, but goods they are, vnleſſe it were in ancient time when ſuch grants were allowed.

12.H.7.28.37.H.6.30.
10.H.4.3.b.

An ancient grant by the Lord to the Commoners in ſuch a waſte, that a way leading to their common ſhould not be ſtreightened, was good, but otherwiſe it is of ſuch a grant at this day. And ſo in ancient time a grant made to a Lord, & hominibus ſuis tam liberis quam nativis or the like was good, but they are not of capacitie to Purchaſe by ſuch a name at this day. But yet at this day if the King grant to a man to haue the goods and chattels de hominibus ſuis, or de tenentibus ſuis, or de reſidentibus infra feodum, &c. it is good, for there they are not named as purchaſers or takers, but for another mans benefit, who hath capacitie to purchaſe or take. And regularly it is requiſite that the Purchaſer be named by the name of Baptiſme and his ſurname, and that ſpeciall heed be taken to the name of Baptiſme, for that a man cannot haue two names of Baptiſme as he may haue diuers ſurnames. And it is not ſafe in writs, pleadings, grants, &c. to tranſlate ſurnames into Latine. As if the ſurname of one be Fitzwilliam, or Williamſon, if he tranſlate him to filius Willi. if in truth his father had any other Chriſtian name then William, the Writ, &c. ſhall abate, for Fitzwilliam or Williamſon is his ſurname whatſoeuer Chriſtian name his father had, therefore the Lawyer neuer tranſlates ſurnames. And yet in ſome caſes, though the name of Baptiſme be miſtaken, (as in the caſe before put of the wife) the grant is good.

32.E.3.*Iure* 261.
33.E.3.*grant* 83.
18.E.3.50.12.Aſſ.35.
14.H.6.12.34.Aſſ.p.11.
40.Aſſ.p.21.
*Bract.lib.*4.*tract.*1.*ca.*20.
*Britton fol.*121.122.
3.E.3.78.25.E.3.43.
26.Aſſ.61.30.Aſſ.16.
46.E.3.22.39.E.3.17.
3.H.6.25.19.H.6.2.
30.H.6.1.34.H.6.19.
11.H.4.27.9.E.4.29.
5.E.4.46.65.14.H.7.11.
20.Bliz.Dier.259.
8.E.3.436.29.E.3.25.
1.H.4. 3.H.6.26.
19.H.6.2.
34.H.6.19.5.E.4.55.

So it is if Lands be giuen to Robert Earle of Pembroke where his name is Henry, to George Biſhop of Norwich, where his name is Iohn, and ſo of an Abbot, &c. for in theſe and the like caſes there can be but one of that Dignity or name, And therefore ſuch a grant is good, albeit the name of Baptiſme be miſtaken. If by Licence lands be giuen to the Deane and Chapter of the holy and indiuided Trinitie of Norwich, this is good, although the Deane be not named by his proper name, if there were a Deane at the time of the grant, but in pleading he muſt ſhew his proper name. And ſo on the other ſide, If the Deane and Chapter make a Leaſe without naming the Deane by his proper name the Leaſe is good, if there were a Deane at the time of the Leaſe, but in pleading, the proper name of the Deane muſt be ſhewed, and ſo is the Booke of 18.E.4. to be intended, for the ſame Iudges in 13.E.4. held the grant good to a Maior, Aldermen, and Commonaltie, albeit the Maior was not named by his proper name, but in pleading it muſt be ſhewed, as it is there alſo holden. If a man bee baptized by the name of Thomas, and after at his Confirmation by the Biſhop he is named Iohn, hee may purchaſe by the name of his Confirmation. And this was the caſe of Sir Francis Gawdye, late chiefe Iuſtice of the Court of Common-pleas, whoſe name of baptiſme was Thomas, and his name of Confirmation Francis, and that name of Francis by the aduice of all the Iudges in Anno 26. H 8. he did beare, and after vſed in all his purchaſes and grants. And this doth agree with our antient bookes, where it is holden that a man may haue diuers names at diuers times, but not diuers Chriſtian names. And the Court ſaid, that it may be that a woman was baptized by the name of Anable, and 40. yeares after ſhee was Confirmed by the name of Douce, and then her name was changed, and after ſhe was to be named Douce, and that all purchaſes, &c. made by her by the name of Baptiſme before her Confirmation remaine good, a matter not much in vſe, nor requiſite to be put in vre, but yet neceſſary to be knowne. But Purchaſes are good in many caſes by a knowne name, or by a certaine deſcription of the perſon without either Surname, or name of Baptiſme, as Vxori I.S. as hath beene ſaid, or primogenito filio, or ſecundo genito filio, &c, or filio natu minimo I.S. or ſeniori puero, or omnibus filijs or filiabus I.S. or omnibus liberis ſeu exitibus of I.S. or to the right heires of I.S.

21.R.2.*brē.*936.
12.R.2.*ſoffments*58.
9.E.3.14.46.E.3.22.
3.H.6.26.34.H.6.19.
1.H.7.29.5.E.2.*brē.*741.
14.H.7.11.
17.E.3.19.18.E.3.58.
30.E.3.18.11.H.4.84.
*Pl Com.*525.21.R.2.*deuiſe.*
41.E.3.19.15.E.3.*Counter-Plea de vouch.*43.35.Aſſ.13.
37.H.6.30. 11.E.4.2.
7.H.4.5.40.E.3.9.
37.H.8.*Norm* 40.*Br.*
15.H.7.14.
8.E.3.437.29.E.3.44
19.E.4.11.21.E.4.19.
7.H.6.29.

But if a man doe infranchiſe a Villeine, cum tota ſequela ſua, that is not ſufficient to infranchiſe his children borne before, for the incertaintie of the word ſequela. But regularly in writs, the demandant or tenant is to be named by his Chriſtian Name and Sirname, vnleſſe it bee in caſes of ſome Corporations or bodies politique.

39.E.3.11.24.17.E.3.42. 35.Ass.13.41.E.3.19.

A Bastard having gotten a name by reputation may purchase by his reputed or knowne name to him and his heires, although he can haue no heire. A man make a Lease to B. for life, remainder to the eldest issue male of B. and the heires males of his body. B. hath issue a bastard sonne, he shall not take the remainder, because in law he is not his issue, for qui ex damnato coitu nascuntur inter liberos non computentur. And as Littleton saith, A bastard is quasi nullius filius and can haue no name of reputation as soone as he is borne. So it is if a man make a Lease for life to B. the remainder to the eldest issue male of B to be begotten of the body of Iane S. whether the same issue be legitimate, or illegitimate. B. hath issue a bastard on the body of Iane S. this sonne or issue shall not take the remainder, for (as it hath beene said) by the name of issue, if there had beene no other words he could not take, and (as it hath beene also said) a Bastard cannot take, but after he hath gained a name by reputation, that he is the sonne of B. &c. And therefore he can take no remainder limitted before he be borne, but after he be borne, and that he hath gained by time a reputation to be knowne by the name of a sonne, then a remainder limitted to him by the name of the sonne of his reputed father is good. But if he cannot take the remainder by the name of issue at the time when he is borne he shall neuer take it. And so it seemeth, and for the same cause, if after the birth of the issue B. had married Iane S. so as he became Bastard eigne, and had a possibilitie to inherit, yet he shall not take the remainder.

Vid. Sect.188.
So it was resolued. M.38.& 39.Eliz. in Bre. de errore. for Land in Portington in com. Salop.

39.E.3.11.24.35.Ass.13. 41.E.3.19.17.E.3.42.

Persons deformed having humane shape, ideots, mad men, leapers, bastards, deafe, dumbe, and blinde, minors, and all other reasonable creatures haue power to purchase and reteyne Lands or Tenements. But the Common law doth disable some men to take any estate in some particular things. As if an office either of the grant of the King or Subiect which concerne the administration, proceeding, or execution of Iustice, or the Kings Reuenue, or the Commonwealth, or the interest, benefit, or safetie of the subiect, or the like; if these, or any of them be granted to a man that is vnexpert, and hath no skill and science to exercise or execute the same, the grant is meerely voyde, and the partie disabled by law, and incapable to take the same, pro commodo regis & populi; for only men of skill, knowledge, and abilitie to exercise the same are capable of the same to serue the King and his people An infant or minor is not capable of an office of Stewardship of the Court of a Mannor either in possession or reuersion. No man though neuer so skilfull and expert, is capable of a iudiciall office in reuersion, but must expect vntill it fall in possession. And see Sect.378. where bargaining or giuing of mony or any manner of reward, &c. for offices there mentioned, shall make such a purchaser incapable thereof, which is worthy to be knowne, but more worthy to be put in due execution.

5.E.4.tit. office & officer. B.48.Vinton's case. 5.Mar.Dier.fo.150. Sergis case.

Some are capable of certaine things for some speciall purpose, but not to vse or exercise such things themselues. As the King is capable of an office, not to vse but to grant, &c.

A monster borne within lawfull matrimonie, that hath not humane shape cannot purchase, much lesse reteine any thing. The same law is de profestis & mortuis seculo, for they are civiliter mortui, whereof you shall reade at large in his proper place, Sect.200.

¶ *Purchase.* In Latin perquisitum of the verbe perquirere, Littleton discribeth it in the end of this chapter in this manner, Item, purchase est appelle possession de trēs ou tenements que home ad per son fait, ou per son agreement, a quel possession il ne a vient per title de discent de nul de ses ancesters, ou de ses cosens per son fait dem. So as I take it, a purchase is to be taken, when one commeth to lands by conueyance or title, and that disseisons, abatements, intrusions, vsurpations, and such like estates gained by wrong, are not said, in law purchases, but oppressions and iniuries.

Pl.com.fo.47.Brit.ca.33.

Note that purchasers of lands, tenements, leases, and hereditaments for good and valuable consideration, shall auoide all former fraudulent and couinous conueyances, estates, grants charges and limitations of vses, of or out of the same, by a Statute made since Litt: wrote, whereof you may plainely and plentifully reade in my reports, to which I will adde this case, I C. had a Lease of certaine lands for 60. yeares if he liued so long, and forged a lease for 90. yeares absolutely, and he by Indenture retting the forged Lease for valuable consideration bargained, and sold the forged Lease: and all his interest in the Land to R.G. It seemed to me that R.G was no purchaser within the statute of 27 Eliz for he contracted not for the true and lawfull interest, for that was not knowne to him, for then perhaps he would not haue dealt for it, and the visible and knowne tearme was forged, and although by generall words the true interest passed, notwithstanding he gaue no valuable consideration nor contracted for it. And of this opinion were all the Iudges in Seriants Inne in Fleetstreete.

27.Eliz.ca 4. 13.Eliz.ca.5. Lib.3.fo.80.82.83 Twines Case. Lib.5.fo.60.Gerards case. lib.6.fo.72.Bwrels case. lib.11.fo.74. Pasch.12.Ia.Inter.Ionet.p'. and Sir Rich.Grobham def. in ejectione firme in euidence ad Iur.

In Ancient time when a man made a fraudulent feffement it was said, quod posuit terram illam in brugam, where brugam doth signifie wrangle, contention, or intricacy, for fraud is the mother of them all. And on the other side, purchases, estates, and contracts may bee auoyded since Littleton wrote by certaine Acts of Parliament against Vsurie aboue ten in the hundred, in such manner and forme as by those Acts it is prouided. which statutes are well expounded in my bookes of reports which may be read there. To them that lend money my counsel is, that neither

Hil. 18.E.3.coram Rege in theseur. 37.H.8.cap.6. 13.Eliz.ca.8.lib 5. fo.69.Burtons case. eodem. lib.fo.7.Cleyton case.

nother directly nor indirectly, by art, or cunning inuention, they take aboue Ten in the hundred, for they that ſeeke by ſleights to creepe out of theſe Statutes, will deceiue themſelues, and repent in the end.

¶ *Purchaſe terres.* Littlet. **here and in many other places putteth** Lands but for an example, for his rule extendeth to ſeigniories, rents, aduowſons, commons, eſtouers, and other hereditaments of what kind or nature ſoeuer. *Lands and other things to be purchaſed.*

¶ *Terre.* Terra, **Land, in the legall ſignification comprehendeth** any ground, ſoile or earth whatſoeuer, as meadowes, paſtures, woods, moores, waters, mariſhes, furſes and heath, terra eſt nomen generaliſſimũ, & comprehendit omnes ſpecies terre, but properly terra dicitur a terendo, quia vomere teritur, & anciently it was written with a ſingle r. and in that ſenſe it includeth whatſoeuer may be plowed, and is all one with arvũ ab arando. It legally includeth alſo all caſtles, houſes, & other buildings: for caſtles, houſes, &c. conſiſt vpon two things, viz. land or ground, as the foundation and ſtructure thereupon, ſo as paſſing the land or ground, the ſtructure or building therupon paſſeth therewith. Land is anciently called Fleth, but land builded is more worthy then other land, becauſe it is for the habitation of man, and in that reſpect hath the precedencie to be demanded in the firſt place in a præcipe, as hereafter ſhall be ſaid. And therefore this element of the earth is preferred before the other elements, firſt and principally, becauſe it is for the habitation and reſting place of man, for man cannot reſt in any of the other elements, neither in the water, ayre or fire. For as the heauens are the habitation of Almightie God, ſo the earth hath he appointed as the ſubburbs of heauen to be the habitation of man; Cœlum cœli domino, terram autem dedit filijs hominum. All the whole heauens are the Lords, the earth hath he giuen to the children of men. Beſides, euery thing as it ſerueth more immediatly or more meerely for the food and vſe of man (as ſhall be ſaid hereafter) hath the precedent dignitie before any other. And this doth the earth, for out of the earth commeth mans foode, and bread that ſtrengthens mans heart, Confirmat cor hominis, and wine that gladdeth the heart of man, and oyle that makes him a cheerefull countenance. And therefore terra olim ops mater dicta eſt quia omnia hac opus habeant ad viuendum. And the Diuine agreeth herewith, for he ſaith, Patriam tibi & nutricem, & matrem, & menſam, & domum poſuit terram deus, ſed & ſepulchrum tibi hanc eandem dedit. Alſo the waters that yeeld fiſh for the foode and ſuſtenance of man are not by that name demaundable in a Precipe, but the land whereupon the water floweth or ſtandeth is demandable (as for example) vigintiacẽ trẽ aqua cooperẽ, and beſides the earth doth furniſh man with many other neceſſaries for his vſe, as it is repleniſhed with hidden treaſures, namely, with gold, ſiluer, braſſe, Iron, tynne, leade, and other mettals, and alſo with great varietie of pretious ſtones, and many other things for profit, ornament and pleaſure. And laſtly, the earth hath in law a great extent vpwards, not only of water as hath beene ſaid, but of ayre and all other things euen vp to heauen, for cuius eſt ſolum eius eſt vſque ad cœlum, as it is holden, 14 H.8. fo.12. 22, H.6.59. 10.E.4.14. Regiſtr. originall, and in other bookes.

Pl. Com. 168.b. & 170.a. & 151.
Lib.4.87.b. Lutterels caſe. 4.E.3.161. & 6.E.3.283. 8.E.3.377.
Temp.E.1.Bre.811.
28.H.8.Diet 47.
Tr.7.E.3.coram Rege Northampt. in theſaur.
Pſal.115.15.
Pſal.104.15.
Ciriſoſt. hom.30.

And albeit land whereof our Author here ſpeaketh, bee the moſt firme and fixed inheritance, and therefore is called ſolum, quia eſt ſolidum, and fee ſimple the moſt higheſt and abſolute eſtate that a man can haue, yet may the ſame at ſeuerall times be moueable, ſometime in one perſon, and alternis vicibus in another, nay ſometime in one place, and ſometime in another. As for example, if there be 80. acres of meadow which haue beene vſed time out of minde of man, to be deuided betweene certaine perſons, and that a certaine number of acres appertaine to euery of theſe perſons, as for example, to A. 13. acres to be yeerely aſſigned and lotted out, ſo as ſometime the 13. acres lie in one place, and ſometime in another, and ſo of the reſt. A. hath a moueable fee ſimple in 13. acres, and may be parcell of his mannor, albeit they haue no certaine place, but yearely ſet out in ſeuerall places, ſo as the number only is certaine, and the particular acres or place wherein they lie after the yeare incertaine. And ſo was it adiudged in the Kings Bench vpon an eſpeciall verdict. *Vid. Sect. 59. where in this caſe liuery ſhall be made.*
Vid. Sect. 648. How theſe 13. acres may be charged.
Hill. 34. Eliz. rot. 489. in trin. inter Weldon & Bridgewater in banco Regis.

If a partition be made betweene two coparceners of one and the ſelfe-ſame land, that the one ſhall haue the land from Eaſter vntill Lammas and to her heires, and the other ſhall haue it from Lammas till Eaſter to her and her heires, or the one ſhall haue it the firſt yeare, and the other the ſecond yeare alternis vicibus, &c. there it is one ſelfe-ſame land wherein two perſons haue ſeuerall inheritances at ſeuerall times. So it is if two coparceners haue two ſeuerall mannors by diſcent and they make partition, that the one ſhall haue the one mannor for a yeare, and the other the other mannor for the ſame yeare, and after that yeare, then ſhe that had the one mannor ſhall haue the other, & ſic alternis vicibus for euer, and albeit the mannors be ſeuerall, yet are they certaine, and therefore ſtronger then Bridgewaters caſe, ſo as this doth make a diuiſion of ſtates of inheritances of lands, viz. Certaine or vnmoueable whereof Littleton here ſpeaketh, and incertaine and moueable, whereof theſe three caſes for examples haue beene put. Wherein it is to be noted, that the poſſeſſion is not only ſeuerall, but the inheritance alſo. *Temp.E.1.tit. partition 21.F.N.B.62.I.*
F.N.B.62.K.
Vid. Sect. 184. where meſſuages, &c. may be appendant and ingros.

It

By what names &c. land, &c. shall passe.
Vid. Sect. 279.
14. H. 8. 6. 4. H. 7. 3.
10. H. 7. 24. 11. H. 7. 21.
14. H. 7. 4. 6. 21. H. 7. 36. 37.
9. H. 6. 52. 37. H. 6. 35.
22. E. 4. *barre.* 116.
11. H. 4. 50. 18. E. 3. *execution* 56. 4. E. 3. 48. 8. E. 3. 13.
9. *Ass. p.* 12. 38. E. 3. 24.
Brall. fo. 222.
17. E. 3. 75. 39. H. 6. 38.
11. *Eliz. Dier.* 285.
Pasch. 12. Ia. *Inter Dockwray & Pount in evidence al Iury in Banco Reg.*
Vid. Sect. 279.
Brall. fo. 208.
40. E. 3. 45. *Pl. com.* 154.
10. H. 7. 24. 28. 7. H. 7. 13.
18. H. 6. 29. 34. H. 6. 43.
20. H. 6. 4. 18. E. 4. 4.
4. E. 3. 48. 1. E. 3. 4. 32. E. 3. *Scir. fac.* 100.
22. E. 4. *barre.* 116.
12. H. 3. *Ass.* 427. 34. *Ass* 11
13. E. 3. *tit. entrie.* 57.
20. E. 3. *Bre.* 685. *IV.* 2. *ca.* 24
Tr. 11. R. 2. *in trin. nient imprimees ne abridge* 11. H. 7. 4.
7. E. 3. 342. 3. *Ass* 9. 10.
7. *Ass.* 9.
45. E. 3. *tit. fessments & fauts.* 90. 14. H. 8. 6.
Pl. com. 541 b. *F. N. B. fo.* 8.
12. E. 3. *D wer.* 90.
9. *Ass. p.* 12. 9. E. 3. 443. 466.
Domesday.
7. R. 1. *mr. fines in Thesaur.*
Int. inquisit. apud Launcast. anno 6. E. 1. *in thesaur.*
Mich. 1. H. 5 *coram Rege rott.* 3. *in thesaur.*
Tr. 7. *Eliz. in banco regis lib.* 5 *fol.* 11. *Iues case.*
14. H. 8. 1. 46. E. 3. 22.
28. H. 8. *Dier.* 19.
32. H. 8. *Br. reseruat.* 39.
7. E. 6. *Dier.* 79.
* *Glanuil. lib.* 8. *cap.* 3.
Domesday Registr. F. N. B. 2.
8. E. 2. *Wast.* 111.
7. *Ass* 18. 11. *Ass. p.* 13.
41. E. 3. *Wast.* 82.
* *Hill.* 14. E. 3. *coram Rege Lanc. in thesaur.*
* *Inter inquisit. apud Lanc. in com. eorwbes coram Iustic. And. anno* 6. E. 1. *in thesaur.*
the B. of Exeesters case.
Domesday.
Camden. 460. 151.
Pasch. 44. E. 3. *coram Rege in Thesaur.*
Hill. 13. E. 2. *Lanc. coram Rege in Thesaur.*
Camden Brit. 247.
vot. parl. 18. E. 1. 8.
Excestre de Carlules case.
Pl. com. 169. a.
4. E. 2. *Bre.* 792. 793.
3. E. 3. 86. 4. E. 4. 1.
27. H. 8. 12.
20. *Ass. pl.* 9.
Pl. com. 169. a. 13. E. 3.
Bre. 241. 33. E. 3. *Entrie* 80.
Domesday. F. N. B. 2. *Regist.*

It is also necessary to be seene by what names lands shal passe. If a man hath 20. acres of land, and by deede granteth to another and his heires vesturam terræ, & maketh liuery of seisin secundum formam cartæ, the land it selfe shall not passe, because he hath a particular right in the land, for thereby he shall not haue the houses, timber trees, mines, and other reall things parcell of the inheritance, but he shall haue the vesture of the land, (that is) the corne, grasse, vnderwood, sweepage, and the like, and he shall haue an action of trespasse, quare clausum fregit. The same Law, if a man grant herbagium terræ, he hath a like particular right in the land, and shall haue an action quarum clausum fregit, but by grant thereof and liuery made, the soile shall not passe as is aforesaid. If a man lett to B. the herbage of his woods, and after grant all his lands in the tenure, possession, or occupation of B. the woods shall passe, for B. hath a particular possession and occupation, which is sufficient in this case, and so it was resolued. So if a man be seised of a Riuer, and by deed doe grant seperalem piscariam in the same, and maketh liuery of seisin secundum formam cartæ, the soile doth not passe nor the water, for the grantor may take water there, and if the riuer become drie, he may take the benefit of the soile, for there passed to the grantee but a particular right, and the liuery being made secundum formam cartæ, cannot enlarge the grant. For the same reason, if a man grant aquam suam, the soile shall not passe, but the pischarie within the water passeth therewith. And land couered with water shall be demaunded by the name of so many acres aqua cooperti, whereby it appeareth that they are distinct things. So if a man grant, to another to dig turues in his land, and to carry them at his will and pleasure, the land shall not passe, because but part of the profit is giuen, for trees, mines, &c. shall not passe. But if a man seised of lands in fee by his deed granteth to another the profits of those lands, to haue and to hold to him and his heires, and maketh liuery secundum formam cartæ, the whole land it selfe doth passe, for what is the land, but the profits thereof, for thereby Vesture, herbage, trees, mines, and all whatsoeuer parcell of that land doth passe.

By the grant of the Bosilloury of Salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called Saliua of the French word salure for a salt pit, and you may reade de Saliua in Domesday, and Selda, signifieth the same thing: and where you shall reade in Records de lacerta in profunditate aque salte, there lacerta signifieth a fathom. A man seised of diuers acres of wood, grants to another omnes boscos suos, all his woods, not only the woods growing vpon the land passe, but the land it selfe, and by the same name shalbe recouered in a præcipe, for boscus doth not only include the trees, but the land also whereupon they grow.

The same law if a man in that case grant omnes boscos suos crescentes, &c. yet the land it selfe shall passe, as it hath beene adiudged * frassetum signifieth a wood, or ground that is woodie. If a man hath a wood of Elder trees containing 20. acres, and granteth to another 20. acras Alneti (with an N not a V) the wood of Elders, and the soile thereof shall passe, but no other kinde of woods shall passe by that name. Alnetum est vbi alni arbores crescunt, * And sullings are taken for elders. Salicetū doth signifie a wood of willowes, vbi salices crescunt, these trees in our bookes are called Sawces. Selda, is a wood of sallowes, willowes or withies. A brakie ground is called filecetum, vbi filices crescunt. A wood of Ashes is called fraxinetū, vbi fraxini crescunt, and passeth by that name, and lupulicetum where hoppes growe, and Arundinetum where reeds growe. Some say that Dene or Denne, whereof Dena commeth, is properly a valley or dale. Dena siluæ, and the like, as drofden, or druiden, or druden, signifieth a thicket of wood in a valley, for druf, or dru, signifieth a thicket of wood, and is often mentioned in Domesday. And sometime Dena or Denna signifieth, as villa and denne, a townes.

Cope signifieth a hill, and so doth Lawe, as Stanlawe is saxeus collis. Howe also signifieth a hill. And hope combe, and Stow are valleyes, and so doth clough. And Dunum or Duna, signifieth a hill or higher ground, and therefore commonly the townes that end in Dun, haue hills of higher grounds in them, which we call Downs. It commeth of the old French word Dun.

In our Latin a wood is called boscus. Graua signifieth a little wood, in old deeds, and Hirst or Hurst a wood, and so doth Holt and Shawe. Twaite signifieth a wood grubbed vp, and turned to errable. Srethe or Stede, betokeneth properly a banke of a riuer, and many times a place, as Stowe doth, and Wic, a place vpon the Sea shore, or vpon a Riuer. Lea or Ley signifieth pasture.

If a man doth grant all his pastures, pasturas, the land it selfe imployed to the feeding of beasts doth passe, and also such pastures or feedings, as he hath in another mans soile. Leswes or Lesues is a Saxon word, and signifieth pastures. Betweene pastura and pascuum, the legall difference is that pastura in one signification containeth, the ground it selfe called pasture, and by that name is to be demanded. Pascuū feeding, is wheresoeuer cattell are fed, of what nature soeuer the ground is, and cannot be demanded in a præcipe by that name.

If a man grant omnia prata sua, all his meadowes, the land it selfe of that kinde passe, & dicitur pratum quasi paratum, because it groweth sponte without manurance. A man grant omnes brueras suas, the soile where heath doth growe passeth, and may be demanded by that name

in

in a præcipe, it is deriued from bruyer a French word for heath, and it is called Ros in the Britisly tongue.

Roncaria or Runcaria, signifieth land full of brandies and briers, and is deriued of Roucier the French word, which signifieth the same, and as much as senticetum. By the grant of omnes Iuncarias or joncarias, the soile where rushes doe grow, doth passe for Ionc in French is a Rush, whereof Ioncaria commeth. A man grant omnes Ruscarias suas, the soile where rusci. i. Anelholme, or butchers pricks or brome doe grow, shall passe, and so in the verse in the Register it is called, but in F.N.B. fol.2 in the verse Pischaria, is put in stead of Ruscaria. And Iampna commeth (of Ionc, and nower) a watrish place, and is all one in effect with Ioncaria, He that graunteth omnes mariscos suos, all his fennes or marish grounds doe passe. Mariscus is deriued of the French word mares or marets; the Latyn word for it, is palus or locus paludosus. Mora is deriued of the English word Moore, and signifieth a more barren and vnprofitable ground then marshes, dangerous for any cattell to goe there, in respect of myre and moorish soile, neyther serues it for getting of turues there: you shall reade in Record, that such a man perquisiuit trescent. acr. maretti, &c. this word marettum is deriued of mare the sea, and tege, and properly signifieth a moorish and graueily ground, which the sea doth couer and ouerflow at a full sea, and lyeth betweene the high water marke and the lowe water marke, infra fluxum & refluxum maris. By grant of these particular kindes, the lands of these particular kindes only doe passe, but as hath beene said by the grant of land generall, all these particular kindes and some others doe passe. Non mihi si centũ linguæ sint oraq; centum, omnia terrarum percurrere nomina possem. And therefore let vs turne our eye to generall words, which doe include lands of seuerall sort and qualities. By the name of an honor, which a subiect may haue, diuers mannors, and lands may passe. So by the name of an Isle Insula, many mannors, lands and tenements may passe.

Holme, or Hulmus signifieth an Isle or fenny ground. * A Commote is a great Seigniorie, and may include one or diuers mannors; By the name of a castle, one or more mannors may be conueyed, & e conuerso. by the name of a mannor, &c. a castle may passe. In Domesday I reade, Comes Alanus habet in suo castellatu 200. maneria, &c. præter castellariam habet 43. maneria, and in that booke a castle is called castellum, and castrum, and domus defensibilis, and mansus muralis. But note by the way, that no subiect can build a castle or house of strength imbattelled, &c. or other fortresse defensible, called in Law by the names aforesaid, and sometimes domus kernellatæ, or Carnellatæ, imbattellatæ, tenellatæ, machecollatæ, mese carnelet, &c. without the licence of the King for the danger which might ensue, if euery man at his pleasure might doe it. And they be called imbattlements, because they are defences against batteis in assaults. Tenellare or tanellare, is to make holes or loopes in walls to shoote out against the Assailants. Machecollare or machecoulare, is to make a warlike deuice ouer a gate or other passage like to a grate, through which scalding water, or ponderous, or offensiue things may bee cast vpon the assaylants. But to returne to the matter from whence vpon this occasion we are fallen.

By the name of a towne Villa, a mannor may passe. In Domesday, Alodium (in a large sence) signifieth a free mannor, and Alodiarij or Alodarij, lords of the same, and Lannemanni there signifie lords of a mannor, hauing socam & sacam de tenentibus & hominibus suis. And by the name of a Mannor, diuers townes may passe, quod olim dicebatur fundus nunc manerium dicitur, by the name of a ferme or fearme firma, houses, lands and tenements may passe, and firma is deriued of the Saxon word feormian, to feede or releeue, for in ancient time they reserued vpon their Leases, cattell and other victuall and prouision for their sustenance. Note a fearme in the North parts is called a Tacke, in Lancashire a Fermeholt, in Essex a Wike. But the word fearme, is the generall word, and anciently fundus signified a fearme and sometime land. Lands making a Knights fee, shall passe by the grant of a Knights fee de vno feodo militis.

Vnum solinum, or solinus terræ in Domesday booke conteyneth two plow lands and somewhat lesse then an halfe, for there it is said, Septem Solini, or Solinæ terræ sunt 17. carucat'. Vna Hida seu carucata terræ, which is all one as a plow-land, viz. asmuch as a plough can till, Sullerye also signifieth a plow-land. Vna virgata terræ, a yard land, the Saxons called it Zirdland, and now the G. is turned to a Y. as in some Countries 10 in some 20. in some 24. in some 30. &c. Vna bouata terræ, an oxgange, or an oxgate of land, is as much as an oxe can till. But carucata terræ, and bovata terræ, are words compound, and may conteyne meadow, pasture, and wood, necessary for such tillage. Ingum terræ in Domesday, conteyneth halfe a plow-land. And by all these names in the raigne of R.1. lands were vsually demanded and long after.

By the name of a Grange, grangia a house or edifice, not only where corne is stored vp like as in barnes, but necessary places for husbandry also, as stables for hay and horses, and stables and styes for other cattell, and a curtilage, and the close wherein it standeth shall passe, and it is a French word, and signifieth the same, as we take it.

Stagnum, in English a poole doth consist of water and land, and therefore by the name of

*Regist.*1.E.3.4. F.N.B.2. 16. *Ass.*p.9. *Regester.*

Iampn.

*Pasch.*41.E.3. coram Rege *Lincoln. rot.*18. *Mag. Carn. ca.*31. *Walingford. Nott. Dolon, Lanc.* &c. *Trin.*33.E.1. coram Rege in *Thes. honor de Huntingd.* *Mich.*9.E.2. coram Rege in *Thes.*18.E.2. *Ass.*377. 26. *Ass.p.*60. 6.E.3.56.47.E.321. *honor de peuerel.*49.E.24. *honor de Egles.* 9.H.6.27. 36.H.8. *Dier.*58. *honor de Gloue.* F.N.B.265. *hono. Abbath. de Merle.* 5.E.4.129.7.H. 6.39.1.E.3.4. &c. 13.E.3. *tresaill.*23. *lib.*4. *fo.*88. *Lutterels case.*5.H.7.9 14.H.4. *tresorder longe.* 8.H.4. *pl. Com.*168. 8.H.[illegible].4 E.4.16. * 13.E.3. *tresaill.*23. 26. *Ass.*54.29.E.3.15. 29.H.6. *trauers.*4. *Bract. fo.*434.1.E.3.4. 5.H.7.9.3.E.2. *Auowry* 188 37.H.6.28. 18.H.6.11. *Libr. rubr scac. fol.*18. *In veteri inscript carta Cap. Escheatrie. fo.*162. *Britton. c.*20. *Rot. Parliam.*45.E.3. *nu.*34 6.H.4. *nu.*19.1.E.4. *ca.*1. *Rot. Parliament.*1.E.3.2. *pars. Alano bar eton.* 22.E.3.2. *pars. Thoma Bar ley &c. Lamb. exposit. verb. feirme. Pl. Com.*195. *Pl. Com.*169. *Regist.*227. *b. execut. firma.* 17.E.2. *fo*8. 5.E.3.313. 16.E.3. *bre.*165. 17.E.2. *bre.*814. 4.E.3.161. 6.E.3.283. 2.E.3.5.35. H.6.29. *Pl. Com.*168. 7. *Ass.*18. 11. *Ass.*13. *Lamb. expos. verb. Hyde & virgat. ter a.* *Glanuil. lib. ca. Domesd.* *Bract. lib.*2. *ca.*26.27. & *lib.*5. *fo.*434. *Reg. fit.*72. 45.E.3. *fine* 49.13.E.3. *fine* 67. 39.H.6.8. 4.E.3.159. 8.E.3.377. *Bract. fol.*180.269.431. 5.H.3. *Dyer.*66. *Pl. Com.* 168. 13.E.3. *bre.*241. 2.E.3.57. *temps* E.1. *bre.*811. *pl. com.*168. *Pl. com.*169. *Linwood.* 44.E.3.31.4.E.3.32. 4.E.3. *fitz. seffmenus & faits* 79.14.E.3 *Formdon.*34. 34. *Ass. pl.*11.

11.E.3.4.4.E.2.43.
8.E.2.38.10.E.3.482.
43.E.3. entry 57.
F.N.B. 9.b.
Domeſday.

Stagnum or a poole, the water and land ſhall paſſe alſo. In the ſame manner Gurges, a deepe pit of water, a gorge or gulfe conſiſteth of water and land, and therefore by the grant thereof by that name, the ſoile doth paſſe, and a præcipe doth lye thereof, and ſhall lay his eſplees in taking of fiſhes, as Breames and Roches. In Domeſday it is called guort, gort & gors plurally, as for example, de 3. gorz mille anguillę.

So it is of a Forreſt, Parke, Chaſe vineyre, and Warren in a mans owne ground, by the grant of any of them, not only the priuiledge, but the land it ſelfe paſſe, for they are compound. In the booke of Domeſday, that is called leuuad and lenga, and leuued, and leuue, which in Latyn is called leuca.

Tempſ.E.1.brs 861.
4.E.3.5.10.H.7.30.
44.E.3.12.43.E.3.24.
35.H.6.55.3.H.6.2.
Domeſday. Bracton.
lib.4.fo.235.
Iut.adiudicat.coram Rege.
p.35 E.3.lib.2.fo.95.in Thoſaur.
40.Aſſ.38.4.H.6.14.
35.E.1.ca.6.
Anno 10.R.1. inter finer in Theſaur.

Stadium, or ferlingus ſive ferlingum, or quarentena terræ, is a furlong of land, and is as much as to ſay, a furrow long, which in ancient time was the eight part of a mile, and land will paſſe by that name. And ſome hold, that by that name land may be demanded. And de ferlingis & quarentenis, you ſhall reade diuers times in the booke of Domeſday, and there you ſhall reade, In inſula Rex habet vnũ fruſtrũ terræ vnde exeunt ſex vomeres. Nota Fruſtrũ, ſignifieth a parcell. Warectum or warecum, or varectum, doth ſignifie fallow; Terra jacet ad Warectũ, the land lyeth fallow: but in truth the word is vervactum, quaſi verè novo victũ ſeu ſubactum, terra novalis ſeu requieta quia alternis annis requieſcat, Tam culta novalia. By the grant of a meſſuage, or houſe meſuagium, the orchard, garden, and curtilage doe paſſe, and ſo an acre or more may paſſe by the name of a houſe. It is deriued of the French word meſe. In Domeſday, a houſe in a Citie or Burrough, is called haga; other houſes are called there manſiones, manſuræ & domus, and in an ancient plea concerning Feuerſham in Kent, haſwes are interpreted to ſignifie manſiones. In Normans French it is called meſiul or meſuil: Bye ſignifieth a dwelling, bye an habitation, and byan to dwell.

Domeſday.
Fruſtum.16.E.3.tit. comon 9.
Mich 8.H.3.in cipien.9.
Coram Rege.Mart.Ro.6.
Virg.eglog.1.a.
Brall.211.233.22.E.4.tres.
140.pl.com.168.171.
23.H.8.Br.ſeiſmens 53.
9.Aſſ.p.21.35.H.6..44.
pl.com.169.

It is to be noted, that in Domeſday there be often named bordarij ſeu borduanni, coſcez, coſcet, cotucami cotarij, are all in effect boors or husbandmen, or cotagers, ſauing that bordarii, which commeth of the French word borde for a cottage ſignifieth, there boors holding a little houſe with ſome land of husbandry bigger then a cottage, and coterelli are meere cottagers, qui cotagia & curtilagia tenent.

Domeſday.
Paſch.30.E.1.coram Rege Kane.in Theſaur.
Statut. de extent. manerii

Villani in Domeſday (often named) are not taken there for bondmen, but had their name de villis, becauſe they had fermes, and there did worke of husbandrie for the lord, and they were euer named before bordarij, &c. and ſuch as are bondmen are called there ſervi.

Domeſday.
Iut.placita coram domino Rege Mich.10.E.3. Rot.26.

Coleberti often alſo named in Domeſday, ſignifieth Tenants in free ſocage by free rent, and ſo it is expounded of record Radmans and Radchemiſtres, (Rad, or rede, ſignifieth firme and ſtable) there alſo often named, theſe are liberi tenentes qui arabant & herciebant ad curiam domini, ſeu falcabant, aut metiebant, becauſe their eſtates are firme and ſtable, and they are many times called Sochemans and ſokemanni, becauſe of their plough ſeruice.

Lamb.expoſit.verb.Thanus.

Dreuchs ſignifieth free tenants of a Mannor there alſo named. Taini or thaini mediocres were freeholders, and ſometime called milites regis, and their land called Tainland, and there it is ſaid, hæc terra T R E. fuit Tainland, ſed poſtea converſa in Reueland. But thainus regis is taken for a Baron, for it is ſaid in an ancient Author, Thainus regis proximus comitieſt, & ibidem mediocris thainus, & alibi Baro ſive thainus. Berqualia or Bercaria, commeth of Berc, an old Saxon word, vſed at this day for barkes or rindes of trees, and ſignifieth a Tanhouſe, or a heath houſe, where barkes or rindes of trees are laid to tanne withall, and Berquarij are mentioned in Domeſday.

Lib.Rub.cap.15. & cap.41. & 76.W.2.c.46.
7.H.4.38.
Lib.diuerſities tit. Aſſ. ompſ.pol.2.
Domeſday.
7.H.4.38.
Fleta lib.2.ca.35.

By Vaccaria in law, is ſignified a Dairy houſe, deriued of vacca the cow. In Latyn it is, Lactar um or Lactitium, and vaccarius is mentioned in Domeſday. And Fleta maketh alſo mention of porcaria a ſwineſtye.

Domeſday.
10.R.1.Inter finer.

The content of an Acre is knowne, the name is common to the Engliſh, German, and French. In legall Latyn it is called, Acra, which the Latinists call iugerum. In Domeſday it is called Arpeu prati, ſilvæ, &c 10.R.1. inter fines acra, in Cornewall, continet 40. perticatas in longitudine & 4. in latitudine & quelibet perticata de 16. pedibus in longitudine.

9.E.3.39. Tempſ. E.1. br. 866. Mich. 30.E.1. coram Rege Glouc. in Theſaur.

By the grant of a Sellon of land, Selio terræ, a ridge of land, which containeth no certainty, for ſome be greater and ſome be leſſer, and by the grant de vna porca, a ridge doth paſſe: Selio is deriued of the French word Sellon for a ridge.

Brall.fo.377.431.43.E.3.27
Regiſt.fo.1. 94.248.249.
F.N.B.fo.87.F.I.
Regula.

By the grant de centum libratis terræ, or 50. libratis terræ, or centum ſolidatis terræ, &c. land of that value paſſeth, and ſo of more or leſſe, and in ancient time by that name it might haue beene demanded. And many things may paſſe by a name, that by the ſame name cannot bee demanded by a præcipe (for that doth require more preſcript forme) but whatſoeuer may be demanded by a precipe, may paſſe by the ſame name by way of grant.

7.R.1.inter finer Suſſex.

Frythe is a plaine betweene woods, and ſo is tawnd or lound, Combe, hope, dene, glyn, hawgh, howgh ſignifieth a Valley. Howe hoo, knol law peu, and cope a hill. Ey, Iug and worth ſignifieth a watry place or water. Faleſia is a banke or hill by the ſea ſide, it commeth of falaize, which ſignifieth the ſame: of all theſe you ſhall reade in ancient bookes, charters, deedes,

and

and records, and to the end that our student should not be discouraged for want of knowledge when he meetes with them (nescit enim generosa mens ignorantiam pati) we haue armed him with the signification of them, to the end he may proceed in his reading with alacritie, and set vpon, and know how to worke into, with delight these rough mines of hidden treasure.

(m) By the name of Minera or fodina plumbi, &c. the land it selfe shall passe in a grant if liuery be made, and also be recouered in an assise, & sic de similibus.

(m) 17.E.3.7.43.E.3.35.b Regist.165.10.H.7.21. Pl.Com.191.195. Bract.211.325.

By the grant of a fouldcourse or the like lands and tenements may passe. (n) Tenementū, Tenement is a large word to passe, not only lands, and other inheritances which are holden, but also offices, rents, commons, profits apprender out of lands and the like, wherein a man hath any frank tenement, and whereof he is seised, vt de libero tenemento. But hereditamentum, hereditament, is the largest word of all in that kinde, for whatsoeuer may be inherited is an hereditament, be it corporeall or incorporeall, reall or personall or mixt.

(n) 45.E.3.Voucher.72. 33.E.3.grant.102. 11.H.6.22.27.14.E.4.4. 20.Ass.p.9. 3.E.4.19.11.H.7.25.

(o) A man seised of lands in fee hath diuers Charters, deeds, and euidences, and maketh a feoffment in fee, either without warranty, or with warranty only against him & his heires, the purchaser shal haue all the Charters, deeds and euidences, as incident to the lands, and ratione terræ, to the end he may the better defend the land himselfe, hauing no warranty to recouer in value, for the euidences are as it were the sinewes of the land, and the feoffor being not bound to warrantie, hath no vse of them. But if the feoffor be bound to warranty, so that he is bound to render in value, then is the defence of the title at his perill, and therefore the feoffee in that case shall haue no deeds that comprehend warranty, whereof the feoffor may take aduantage. Also hee shall haue such Charters as may serue him to deraigne the warrantie paramount; Also hee shall haue all deeds and euidences, which are materiall for the maintenance of the title of the land, but other euidences which concerne the possession, and not the title of the land, the feoffee shall haue them.

(o) Lib.1.fo.1.& 2.in Seignior Buckhurst's case. 44.E.3.11.b.39.E.3.17.a. 19.H.6.65.b.34.H.6.1.a. 10.E.4.9.b.18.E.4.14.15. 6.H.7.3.b.H.7.33.a.

¶ *Auer & tener.* These two words doe in this place proue a double signification, viz. auer, to haue an estate of inheritance of lands discendible to his heires; and tener to hold the same of some superior lord.

There haue beene eight formall or orderly parts of a deede of feoffment, viz. 1. the premisses of the deed implied by Littleton. 2. the habendum where Litt. here speaketh, 3. the tenendum mentioned by Litt. 4. the Reddendum. 5. the clause of warrantie. 6. the In cuius rei testimonium, Comprehending the sealing. 7. The date of the deede contayning the day, the moneth, the yeare, and stile of the King, or of the yeare of our Lord. (a) Lastly, the clause of hijs testibus, and yet all these parts were contained in very few and significant words, (b) Hæc fuit candida illius ætatis fides & simplicitas, quæ pauculis lineis omnia fidei firmamenta posuerunt.

Vid.Sect.370.371. many things de cartis & factis. Fleta.lib.3.cap.14. Britton.100.101. Bracton lib.5.fo.396.a. 339.38.H.6.32.36. El.com.Wroteſs Pidſa, fo.96. (a) Vid. Throgmortons case, pl.com. (b) Lib.6.fo.43.in Sir Anthony Mildemayes case.

The office of the premisses of the deede is twofold. First rightly to name the feoffor and the feoffee. And secondly to comprehend the certainty of the lands or tenements to be conueyed by the feoffment, either by expresse words, or which may by reference be reduced to a certainty; for, id certum est quod certum reddi potest. The habendum hath also two parts, viz. first, to name against the feoffee, and secondly to limit the certaintie of the estate. The Tenendum at this day where the fee simple passe, must be of the chiefe lords of the fee. And of the Reddendum more shalbe said in his proper place in the chapter of Rents. Of the clause of warrantie more shall be said in the chapter of warranties. In Cuius rei testimonium sigillum meum apposui was added, for the Seale is of the essentiall part of the deed. The date of the deede many times Antiquitie omitted, and the reason thereof was for that the limitation of prescription or time of memory did often in processe of time change, and the law was then holden that a deede, bearing date, before the limitted time of prescription was not pleadable, and therefore they made their deedes without date, to the end they might alleage them within the time of prescription. And the date of the deedes was commonly added in the raigne of E.2. and E.3. and so euer since.

Vid.Sect.298.

Britt.fol.101.

And sometimes antiquitie added a place, as Datum apud D. which was in disaduantage of the feoffee, for being in generall, he may alleage the deede to be made where he will. And lastly, Antiquitie did adde, hijs testibus in the continent of the deede after the In cuius rei testimonium, written with the same hand that the deede was, which witnesses were called, the Deede read, and then their names entred. (p) And this is called charter land, and accordingly the Saxons called it Bockland, as it were booke land which clause of hijs testibus in subiects deeds continued vntill and in the raigne of H.8. but now is wholly omitted. And it appeareth by the ancient Authors and Authorities of the Law; that before the Statute of 12.E.2.ca.2. Processe should be awarded against the witnesses named in the deede, testes in carta nominatos, (a) and that the same Statute was but an affirmance of the Common law, which not being well vnderstood, hath caused varietie of opinions in our bookes. But the delay therein was so great, and sometimes (though rarely) by exceptions against those witnesses, which being found true, they were not to be sworne at all, neither to be ioyned to the Jury, nor as witnesses; (b) as if the witnesse were infamous, for example, if he be attainted of a false verdict, or of a conspiracie at the

(p) Lamb.exposit.verb. terra ex.scripto. Vid.Fortescue.cap.32. see the second part of the Institut.cap.38. 12.E.2.c.2. see the second part of the institutes, Marlbr. cap.6.& cap 14. (a) Britton.fo.65.101. 11.E.3.Process.170. 6.H.3 process,209. 8.H.3.process,210. 4.E.2 & rd 119. (b) Mirror.cap.4.§ de infamies & periurie. Glanvil.lib.2.cap.15. Bract lib.5 fo.288 292. Britt fo 134.135.101. Fleta lib.5 ca.21. 8.E.2.Ass.356. 2.E.3.& 2.24.E.3 34.

ſuite of the King, or conuicted of periury, or of a Premunire, or of forgerie vpon the Statute of 5. Eliz. cap. 14. and not vpon the Statute of 1. H. 5. cap. 3. or conuict of felony, or by iudgement loſt his eares, or ſtood vpon the pillory, or tumbrell, or beene ſtigmaticus branded, or the like, whereby they become infamous for ſome offences, quæ ſunt minoris culpæ ſunt maioris infamiæ. (c) If a champion in a writ of right become recreant or coward, hee thereby looſeth liberam legem and thereby becomes infamous, and cannot be a witneſſe, for regularly hee that looſeth liberam legem, becommeth infamous and can be no witneſſe. Or if the witneſſe be an infidell, or if non ſane memory, or not of diſcretion, or a partie intereſſed or the like. (d) But often times a man may be challenged to be of a Jury, that cannot be challenged to be a witneſſe; and therefore though the witneſſe be of the neereſt alliance, or kindred, or of councell, or tenant, or ſeruant to either partie, (or any other exception that maketh him not infamous, or to want vnderſtanding, or diſcretion, or a partie in intereſt) though it be proued true, ſhall not exclude the witneſſe to bee ſworne (e) but hee ſhall bee ſworne, and his credit vpon the exceptions taken againſt him left to thoſe of the Jury, who are tryers of the fact, inſomuch as ſome bookes haue ſaid that though the witneſſe named in the Deede be named a Diſſeiſor in the Writ, yet he ſhalbe ſworne as a witneſſe to the deede, (f) A witneſſe amongſt others named in a Deed was outlawed, & no Proces was awarded againſt him by the Statute, becauſe he was extra legem, and an outlawed perſon cannot be an Auditor. And the Court in ſome bookes haue ſaid, that they haue not ſeene witneſſes challenged, which is regularly to be vnderſtood, with the limitations aboue-ſaid, but ſuch as are returned to be of a Jury, are to bee challenged for the cauſes aforeſaid for outlawrie, and diuers other cauſes (for the which a witneſſe cannot be challenged) and ſuch proces againſt witneſſes vaniſhed. But ſeeing the witneſſes named in a Deede ſhall be ioyned to the Inqueſt, and ſhall in ſome ſort ioyne alſo in the verdict (in which caſe if Jury and witneſſes finde the Deede that is denied to bee the Deede of the partie, the aduers partie is barred of his attaint, becauſe there is more then 12. that affirme the verdict.) It is reaſon that in that caſe of ioyning, ſuch exception ſhall bee taken againſt the witneſſe as againſt one of the Jury, becauſe he is in the nature of a Juror. (a) And therefore to put one example if her be outlawed in a perſonall action hee cannot bee ioyned to the Jurie, but yet that is no exception againſt him to exclude him to be ſworne as a witneſſe to the Jury. And the reaſon of all this is, for that if he with others ſhould ioyne in verdict with the Jury in affirmance of the Deede, the partie ſhould be barred of his Attaint. But note there muſt be more then one witneſſe, that ſhall be ioyned to the Inqueſt. And albeit they ioyne with the Jury, and finde it not his Deede, notwithſtanding this ioyning, the partie ſhall haue his attaint, for it is a maxime in Law, (b) That witneſſes cannot teſtifie a negatiue, but an affirmatiue. And if one of the witneſſes named in the Deede be one of the panell, he ſhalbe put out of the panell, and all theſe ſecrets of law, doe notably appeare in our bookes.

43. E. 3. Conſpir. 11.
27. Aſſ. 59.
33. H. 6. 55. 21. H. 6. 30.
(c) Forteſcu. cap. 26.
Pas. 55. H. 3. m. 3.
Staun. Pl. Cor. 174. a.
(d) Forteſcue. ca. 25.
(e) 22. Aſſ. 12. & 41.
23. Aſſ. 11.
19. E. 2. tit. Aſſ. 409.
(f) 34. E. 1. Proces. 208.
(a) 34. E. 1. tit. proces. 308.
11. Aſſ. p. 19. 20. 12. Aſſ. p. 1.
12. 41. 18. Aſſ. p. 11.
22. Aſſ. 15. 23. Aſſ. 15.
40. Aſſ. 23. 48. Aſſ. p. 5.
21. H. 6. 30.
(b) 48. E. 3. 30. 12. H. 6. fo 6. a
50. E. 3. 16. 43. E. 3. 32.
12. H. 4. 9. 19. E. 2. fol. 408.
Taſch. 14. E. 3. coram Rege
Drom. in Theſaur.
Fleta. lib. 6. cap. 6.
Fitz. N. B. 106. H & 97. c.

To ſhut vp this point, it is to be knowne, (c) that when a tryall is by witneſſes, regularly the affirmatiue ought to be proued by two or three witneſſes, as to proue a ſummons of the tenant, or the challenge of a Juror, and the like. But when the tryall is by verdict of 12. men, there the iudgement is not giuen vpon witneſſes, or other kinde of euidence, but vpon the verdict and vpon ſuch euidence as is giuen to the Jury they giue their verdict. And Bracton ſaith, there is probatio duplex, viz. viua, as by witneſſes viua voce, and mortua, as by deedes, writings, and inſtruments. And many times Juries, together with other matter, are much induced by preſumptions, whereof there be three ſorts, viz. violent, probable, and light or temerarie. Violenta preſumptio is many times plena probatio, as if one be runne thorow the body with a ſword in a houſe, whereof he inſtantly dieth, and a man is ſeene to come out of that houſe with a bloody ſword, and no other man was at that time in the houſe, preſumptio probabilis moueth little, but, Preſumptio leuis ſeu temeraria, moueth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deede be dead (as no man can keepe his witneſſes aliue, and time weareth out all men) then violent preſumption which ſtands for a proofe is continuall and quiet poſſeſſion, for ex diuturnitate temporis omnia præſumuntur ſolenniter eſſe acta, alſo the deed may receiue credit, per collationem ſigillorum, ſcripturæ, &c. & ſuper fidem cartarum mortuis teſtibus erit, ad patriam de neceſſitate recurrendum.

(c) Mirr. ca. 3.
Tl. com fo. 10.
Bract lib. 5. fo. 400.
Fleta lib. 6. ca. 38.
8. E. 3. 390. 39. E. 3. 21. b.
Glanuil. lib. 10. ca. 12.
Fleta lib 6, ca. 33.

Note, it hath beene reſolued by the Iuſtices, that a wife cannot be produced either againſt or for her huſband, quia ſunt duæ animæ in carne vna, and it might be a cauſe of implacable diſcord and diſſention betweene the huſband and the wife, and a meane of great inconuenience, but (d) in ſome caſes women are by law wholly excluded to beare teſtimony, as to proue a man to be a Villeine, mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court (e) that in an Information vpon the ſtatute of Vſurie, the partie to the vſurious contract ſhall not be admitted to be a witneſſe againſt the Vſurer, for in effect hee ſhould be teſtis in propria cauſa, and ſhould auoide his owne bonds and aſſurances, and diſcharge himſelfe of the money borrowed, and, though he commonly raiſe vp an Informer to exhibite the Information, yet in rei veritate he is the partie. And herewith in effect agreeth Eriton,

Taſch. 10. Ia. in Com. banco vpon the Stat. of Bankrouts.
(d) Fleta lib 2 ca. 44.
13. E. 1. tit. Vill. 36 37.
19. E. 2 Ibid 32.
(e) Tr. 8 Ia in Com. banco. Smiths Caſe.
in euidence vpon an information vpon the ſtatute of Vſury.
Drom fo. 134.

ton, that he that challengeth a right in the thing, in demand cannot be a witneſſe, for that he is a partie in intereſt. But now let vs returne to that from the which by way of digreſſion (vpon this occaſion) we are fallen.

And the ancient Charters of the King which paſſed away any franchiſe or reuenue of any eſtate of inheritance had euer this clauſe of hijs teſtibus, of the greateſt men of the kingdome, as the Charters of creation of Nobility, yet haue at this day: when hijs teſtibus was omitted, and when teſte me ipſo came in into the Kings grants, you ſhall reade in the ſecond part of the Inſtitutes magna charta, ca. 38. I haue tearmed the ſaid parts of the Deed, formall or orderly parts, for that they be not of the eſſence of a Deede of feoffment, for if ſuch a Deede be without premiſſes, habendum, tenendum, reddendum clauſe of warrantie, the Clauſe of In cuius rei teſtimonium, the Date. and the clauſe of his teſtibus, yet the Deede is good. (f) For if a man by Deede giue lands to another, and to his heires without more saying, this is good, if he put his Seale to the Deede, deliuer it, and make liuery accordingly. (g) So it is if A. giue lands, to haue and to hold, to B. and his heires, this is good, albeit the feoffee is not named in the premiſſes. And yet no well aduiſed man will truſt to ſuch Deedes, which law by conſtruction maketh good vt res magis valeat, but when forme and ſubſtance concurre, then is the Deede faire and abſolutely good. The ſealing of Charters, and Deeds is much more ancient then ſome, out of eroꝛ, haue imagined; for the Charter of the King Edwyn, brother of King Edgar, bearing date Anno Domini, 956. made of the land called Iecklea in the Iſle of Ely, was not only ſealed with his owne Seale (which appeareth by theſe words, Ego Edwinus gratia dei totius britannicæ telluris rex meum donum proprio ſigillo confirmavi) but alſo the Biſhop of Wincheſter put to his Seale, Ego Ælfwinus Wintoñ Eccleſiæ divinus ſpeculator propriũ ſigillũ impreſſi. And the Charter of King Offa, whereby he gaue the Peter-pence, doth yet remaine vnder Seale. But no King of England, before, or ſince the Conqueſt, ſealed with any ſeale of Armes, before King R. 1. but the Seale was the King ſitting in a chaire on the one ſide of the Seale, and on horſeback on the other ſide in diuers formes. And King R. 1. ſealed with a Seale of two Lyons, for the Conqueror for England bare two Lyons, and King Iohn in the right of Normandy (the Duke whereof bare one Lyon) was the firſt that bare three Lyons, and made his Seale accordingly, and all the Kings ſince haue followed him. And King E. 3. in anno 13. of his raigne, did quarter the Armes of France with his three Lyons, and tooke vpon him the title of King of France, and all his ſucceſſors haue followed him therein.

In ancient Charters of feoffment there was neuer mention made of the deliuery of the Deed or any liuery of ſeiſin indorſed, for certainly the witneſſes named in the Deede, were witneſſes of both: and witneſſes either of deliuery of the Deede, or of liuery of ſeiſin by expreſſe tearmes was but of latter times, and the reaſon was in reſpect of the notorietie of the feoffment. And I haue knowne ſome ancient Deedes of feoffment hauing liuery of ſeiſin indorſed ſuſpected, and after detected of forgerie. As if a Deede in the ſtile of the King name him Defenſor fidei before 13. H. 8. or ſupreame head before 20. H. 8. at what time hee was firſt acknowledged ſupreame head by the Cleargie, albeit the King vſed not the ſtile of ſupreame head in his Charters, &c. till 22. H. 8. or King of Ireland, before 33. H. 8. at which time he aſſumed the title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & ſic de ſimilibus. 31. H 8. ca. 16.

And ſome haue obſerued, that Grace was attributed to King H. 4. Excellent grace to King H. 6. Maieſtie to King H. 8. and before the King was called, Soueraigne Lord, Liege Lord, Highneſſe, and Kingly Highneſſe, which in Latyn in legall proceedings is called regia celſitudo, as the beginning of the Petition of right to the King is, humilimè ſupplicauit veſtræ celſitudini regiæ, &c. and the like. And vpon this occaſion it ſhall not be impertinent, ſeeing it is part of the formall Deede, to ſet downe the ſeuerall ſtiles of the Kings of England ſince the Conqueſt. *Vid* 3. *H.* 4 *ca.* 15. *where* Royall Maieſty *is attributed to the King, and* Crimen leſe Maieſtatis *is farre more anoient.*

William the Conqueror commonly ſtyled himſelfe Willielmus rex, and ſometimes Willielm. rex Anglorum. And the like did William Rufus, and ſometimes Willielmus dei gratia rex Anglorum.

Henry the firſt, Henricus rex Anglorum. and ſometimes Henricus dei gratia rex Anglorum.

Mawde the ſole daughter and heire of H. 1. wrote Matildis imperatrix Henrici regis filia & Anglorum domina. Diuers of whole creations and grants I haue ſeene.

King Stephen vſed the ſtile that King H. 1. did.

Henry the 2. Fitz emprice omitted dei gracia, and vſed this ſtile, Henricus rex Angliæ, dux Normanniæ, & Aquitaniæ, & comes Andegauiæ, hee hauing the Dutchie of Aquitaine, and Earledome of Poitiers in the right of Elianor his wife heire to both: And the Earledome of Aniowe Tournie and Maine, as ſonne and heire to Ieffery Plantagenet by the ſaid Mawde his wife, daughter and ſole heire of King H. 1. She was firſt married to Henry the Emperour, and after his death to the ſaid Ieffery Plantagenet. Which Dutchie of Aquitaine doth include, Gaſcoigne and Guian.

King R. 1. vſed the ſtile that H. 2. his father did, yet was he King of Cyprus, and after of Ieruſalem, but neuer vſed either of them.

(f) *Mirror ca.* 1 §. 6. & *ca.* 5 § 1. *Glanvil lib.* 10 *ca.* 12. *Bract lib.* 5. *fo* 396. *Fleta. lib.* 6. *ca.* 32. *Britt fo* 66.

(g) *Vid termes of the law, verb. faits. Vid. Glanvil lib.* 10 *cap.* 12. *Mirror, cap.* 1. §. 3. & *cap.* 3.

King Iohn vſed that ſtile, but with this addition Dominus Hibernię, and yet all that he had in Ireland was conquered by his father King H. 2. which tytle of Dominus Hiberniæ, hee aſſumed, as annexed to the Crowne, albeit his father, in the 23. yeare of his raigne, had created him King of Ireland in his life time.

King H. 3. ſtiled himſelfe as his father King Iohn did, vntill the 44. yeare of his raigne, and then he left out of his ſtile Dux Normanniæ, & comes Audegauiæ, and wrote only Rex Angliæ dominus Hiberniæ, & dux Aquitaniæ.

King E. 1. ſtiled himſelfe in like manner as King H. 3. his father did, Rex Angliæ dominus Hiberniæ, & dux Aquitaniæ. And ſo did King E. 2. during all his raigne. And King E. 3. vſed the ſelfeſame ſtile vntill the 13. yeare of his raigne, and then he ſtiled himſelfe in this ſoune Edwardus dei gratia Rex Angliæ & Franciæ, & dominus Hiberniæ, leauing out of his ſtile dux Aquitaniæ. He was King of France, as ſonne and heire of Iſabell wife of King E. 2. daughter and heire of Philip la beau King of France, he firſt quartered the French armoyes with the Engliſh in his great Seale, Anno domini 1338. & regni ſui 14.

King R. 2. and King H. 4. vſed the ſame ſtile that King E. 3. did. And King H. 5. vntill the 8. yeare of his raigne continued the ſame ſtile, and then wrote himſelfe, Rex Angliæ hæres & regens Franciæ, & dominus Hiberniæ, and ſo continued during his life.

Vid. Rot. Parliam. anno 1. H. 6. nu. 15. he was ſtiled Rex Francia & Anglia & dominus Hibernia.

King H. 6. wrote, Henricus dei gratia Rex Angliæ & Franciæ, & dominus Hiberniæ; this King being crowned in Paris King of France vſed the ſaid ſtyle 39. yeares, till he was diſpoſſeſſed of the Crowne by King E. 4. who after he had raigned alſo about tenne yeares, King H. 6. was reſtored to the Crowne againe, and then wrote, Henricus dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ ab in choatione regni ſui 49. & recaptionis regiæ poteſtatis primo.

King E. 4. R. 3. and H. 7. ſtiled themſelues, Rex Angliæ & Franciæ, & dominus Hiberniæ.

King H. 8. vſed the ſame ſtile till the tenth yeare of his raigne, and then hee added this word (Octavus) as Henricus octavus dei gratia, &c. In the 13. yeare of his raigne he added to his ſtile fidei Defenſor. In the 22. yeare of his raigne, in the end of his ſtile hee added ſupremum caput Eccleſiæ Anglicanæ. And in the 33. yeare of his raigne he ſtiled himſelfe thus Henricus octavus dei gratia Angliæ, Franciæ & Hiberniæ rex fidej defenſor, &c. & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput.

King E. 6. vſed the ſame ſtile, and ſo did Queene Mary in the beginning of her raigne, and by that name ſummoned her firſt Parliament, but ſoone after omitted ſupremum caput. And after her marriage with King Philip, the ſtile notwithſtanding that omiſſion was the longeſt that euer was, viz. Philip and Mary by the grace of God King and Queene of England and France, Naples, Ieruſalem and Ireland Defendors of the Faith, Princes of Spaine and Cicilie, Archdukes of Auſtria, Dukes of Millaine, Burgundie, and Brabant, Countees of Hasburgh, Flanders and Tyroll. And this ſtile continued till the fourth and fift yeare of King Philip and Quæne Mary, and then Naples was put out, and in place thereof both the Cicills put in, and ſo it continued all the life of Quæne Mary.

I need not mention the ſtile of Quæne Elizabeth, King Iames, nor of our Soueraigne Lord King Charles, becauſe they are ſo well knowne, and I feare I haue beene too long concerning this point, which certainely is not vnneceſſary to be knowne for many reſpects. But to ſhew the cauſes and reaſons of theſe alterations would aſke a treatiſe of it ſelfe, and doth not ſort to the end, that I haue aymed at. And now let vs returne to the learning of Charters and deeds of Feoffments and Grants.

Liuery of ſeiſin incident to a Feoffment. Vid. Sect. 59.

Very neceſſary it is, that Witneſſes ſhould be vnderwritten or indorſed, for the better ſtrengthening of Deedes, and their names (if they can write) written with their owne hands. For Liuery of ſeiſin. See hereafter Sect. 59. and for Deedes, Sect. 66. and of condicionall Deedes. See our Author in his Chapter of conditions. And now let vs proceede to the other words of our Author.

Miror. ca. 2 §. 15. Bract. lib. 2 fo. 62. b. Flet. lib. 6. ca. 1. & 54. & lib 1. ca. 13. Glanvill lib. 7. ca. 1. & ca. 12. & 13.

¶ *A luy & a ſes heires.* Hæres, in the legall vnderſtanding of the Common Law, implyeth that he is ex iuſtis nuptijs procreatus, for Hæres legittimus eſt quem nuptiæ demonſtrant, and is he to whom lands, tenements, or hereditaments by the act of God, and right of blood doe diſcend of ſome eſtate of inheritance, for ſolus Deus hæredem facere poteſt non homo: dicuntur autem hæreditas & hæres ab hærendo, quod eſt arctè inſidendo, nam qui hæreſeſt hæret, vel dicitur ab hærendo quia hæreditas ſibi hæret, licet nonnulli hæredem dictum velint quod hæres fuit, hoc eſt dominus terrarum, &c. quæ ad eum perueniunt.

(a) Bract. lib 5. fo. 437. 438. Brit. ca. 66. fo. 167. & ca. 83. Flete lib. 1. ca. 5.

A monſter which hath not the ſhape of man kinde, cannot be heire or inherit any land, albeit it be brought forth within marriage, (a) but although he hath deformitie in any part of his bodie, yet if he hath humane ſhape he may be heire. Hij qui contra formam humani generis conuerſo more procreantur, vt ſi mulier monſtroſum, vel prodigioſum enixa, inter liberos non computentur partus tamen, cui natura aliquantulum ampliauerit vel diminuerit, non tamen ſi perabundantur (vt ſi ſex digitos vel niſi quatuor habuerit) bene debet inter liberos connumerari.

Si

Si inutilia natura reddidit, ut ſi membra, tortuoſa habuerit, non tamen is partus monſtroſus. Another faith, ampliatio ſeu diminutio membrorum non nocet. (b) A Baſtard cannot bee heire, for (as hath beene ſaid before) qui ex damnato coitu naſcuntur inter liberos non computentur. Euery heire is either a male, or female, or an Hermophradite, that is both male and female. And an Hermophradite (which is alſo called Androgynus) ſhall bee heire, either as male, or female, according to that kinde of the ſexe which doth preuaile. Hermophradita, tam maſculo, quam feminæ comparatur, ſecundum prævaleſcentiam ſexus in caleſcentis. And accordingly it ought to be baptized. See more of this matter, Sect 3.

(b) *Vid. Sect.* 188. 399. *Bract. lib.* 2. *fo.* 92. *Britton, fo. Fleta lib.* 1. *ca.* 5. & *lib.* 6. *ca.* 8 *Felta. vt ſup a.* 3. *R.* 2. *entr. cong.* 38.

(c) A man ſeiſed of lands in fee hath iſſue an Alien that is borne out of the Kings ligeance, he cannot be heire, propter defectum ſubiectionis, albeit he be born within lawfull mariage. If made Denizen by the Kings Letters patents, yet cannot he inherite to his father or any other. But otherwiſe is it, if he be naturalized by act of Parliament, for then hee is not accounted in law alienigena, but indigena. But after one bee made Denizen, the iſſue that hee hath afterwards ſhalbe heire to him, but no iſſue that he had before. If an Alien commeth into England and hath iſſue two ſonnes, theſe two ſonnes are indigenæ ſubiects borne, becauſe they are borne within the realme. And yet if one of them purchaſe lands in fee, and dieth without iſſue, his brother ſhall not be his heire, for there was neuer any inheritable blood betweene the father and them, and where the ſonnes by no poſſibility can be heire to the father, the one of them ſhall not be heire to the other. See more at large of this matter, Sect. 198.

(c) *Mirror. ca.* 1. *Ca.* 3. §. *ca.* 3. §. *Bract. lib.* 5 *fo.* 415 427. *Britt. fo.* 29. *Fleta lib.* 6. *ei.* 47. 13. *E.* 3. *br.* 677. 25. *E.* 3. *de natis vltra mare.* 31. *E.* 3. *Coſtage* 5. 42. *E.* 3. 2. 11. *H.* 4. 26. 14. *H.* 4. 19. 20. 3. *H.* 6. 55. 22. *H.* 6. 38. 9. *E* 4. 8. *lib.* 7 *fo.* 1. *in Calvins caſe.*

If a man be attainted of treaſon, or felony, although hee be borne within wedlocke, hee can be heire to no man, nor any man heire to him propter delictum, for that by his attaindor his blood is corrupted. And this corruption of blood is ſo high, as it cannot abſolutely bee ſaued, and reſtored but by Act of Parliament, for albeit the perſon attainted obtaine his Charter of pardon, yet that doth not make any to be heire whoſe blood was corrupted at the time of the attainder, either downward or vpward. (d) As if a man hath iſſue a ſonne before his attainder and obtaineth his pardon, and after the pardon hath iſſue another ſonne, at the time of the attainder the blood of the eldeſt was corrupted and therefore he cannot be heire. But if hee die liuing his father the younger ſonne ſhall bee heire, for he was not in eſſe at the time of the attainder, and the pardon reſtored the blood as to all iſſues begotten afterwards. But in that caſe if the eldeſt ſonne had ſuruiued the father, the younger ſonne cannot be heire, becauſe he hath an elder brother which by poſſibilitie might haue inherited, but if the elder brother had beene an Alien the younger ſonne ſhould bee heire, for that the alien neuer had any inheritable blood in him. See more plentifully of this matter, Sect. 646. 647.

1. *E.* 3. 4. 6. *E.* 3. 55. 27 *E.* 3. 77. 3. *E.* 2. *diſcent. Br.* 64. 31. *E.* 1. *diſcent.* 17. 46. *E.* 3. *Petition* 20. 26. *Aſſ. p.* 2. 49. *Aſſ. pl.* 4. 29. *Aſſ. p.* 11. 9. *H.* 5. 9. (d) *Stanf. pl. cor.* 195. 196. *Bract. lib.* 3 *fo.* 132. 133. 276. & *lib.* 3. *fo.* 374. *Britt. fo.* 215. *b. Fleta lib.* 1. *ca.* 28.

If a man hath iſſue two ſonnes, and after is attainted of treaſon, or felony, and one of the ſonnes purchaſe lands and dieth without iſſue, the other brother ſhall be his heire, for the attainder of the father corrupteth the lineall blood only, and not the collaterall blood betweene the brethren, which was veſted in them before the attainder, and each of them by poſſibilitie might haue beene heire to the father, and ſo hath it beene adiudged, (*) but otherwiſe in the caſe of the alien nee, as hath beene ſaid. (e) But ſome haue holden that if a man after he be attainted of treaſon or felony haue iſſue two ſonnes that the one of them cannot bee heire to the other becauſe they could not be heire to the father, for that they neuer had any inheritable blood in them.

* *In the Exchequer Mich.* 40. & 41. *Eliz. in le Caſe de Hoby.*

(e) *Bracton lib.* 3. *fol.* 130. *Britton fol.* 15. *Fleta. lib.* 1. *cap.* 58.

(f) One that is borne deafe and dumbe may be heire to another, albeit it was otherwiſe holden in ancient time, And ſo if borne deafe, dumbe and blinde, for in hoc caſu, vitio parcitur naturali, but contract they cannot. Ideots, leapers, madmen, outlawes in debt, treſpaſſes, or the like; perſons excommunicated, men attainted in a præmunire, or conuicted of hereſie, may be heires.

(f) *Bract. lib.* 5. *fo.* 421. 430. 434. *lib.* 2. *fo.* 12. *Fleta. lib.* 6. *ca.* 39. 47. 14. *H.* 3. *brc.* 877. 32. *E.* 3. *Age.* 8. 10. *E.* 3. 533. 18. *E.* 3. 53. 13. *E.* 3. *Ley* 49.

(g) If a man hath a wife, and dieth, and within a very ſhort time after the wife marrieth againe, and within 9. moneths hath a childe, ſo as it may be the childe of the one or of the other. Some haue ſaid, That in this caſe the childe may chooſe his father, quia in hoc caſu filiatio non poteſt probari, and ſo is the booke to be intended, for auoyding of which queſtion and other inconueniences, this was the Law before the Conqueſt, Sit omnis vidua ſine marito duodecim menſibus, & ſi maritauerit perdat dotem.

(g) 21. *E.* 3. 39. *Panarollus nous reports* 485. *&c. Opus eximium* 48. *b. Lambard de priſcis Anglorum legibus* 120. 72. *acc.*

(h) A man by the Common Law cannot be heire to goods or chattels, for hæres dicitur ab hæreditate. (i) If a man buy diuers fiſhes, as Carps, Breames, Tenches, &c. and put them in his Pond and dieth, in this caſe the heire ſhall haue them and not the Executors, but they ſhall goe with the inheritance, becauſe they were at liberty and could not bee gotten without induſtrie as by nets, and other ingines, otherwiſe it is if they were in a trunke or the like. Likewiſe Deere in a Parke, conies in a Warren, and Doues in a doue-houſe young and old ſhall goe to the heire. (k) But of ancient time the heire was permitted to haue an action of debt vpon a bond made to his Anceſtor and his heires, but the Law is not ſo holden at this day. Vid. Sect. 12.

(h) *Lib.* 8. *fo.* 54. *Symſ caſe.*

(i) *Mich.* 36. & 37. *Eli. Rot.* 25. *Inter. Gray and Paulet in the Kings bench. Stanford* 25. *b.* 18. *E.* 4. 8. 22. *Aſſ.* 25. 18. *H.* 8. 2.

(k) 13. *E.* 3. *dett.* 135. 139. 140. 47 *E.* 3. 23. 25. *E.* 3. *fo.* 48. 26. *E.* 3. *fo.* *Vid. for an hæreditamenta hereditarium or principalius, Sect.* 12.

(l) It is to be noted that one cannot be heire till after the death of his anceſtor, he is called hæres apparens, heire apparant.

(l) *Mirror. ca.* 1. §. 3.

In

In our olde bookes and recoyds there is mention made of another heire, viz. hæres astrarius, so called of Astre that is an harth of a house, because the auncestor by conueyance hath set his heire apparant, and his family in a house and liuing in his life time, of whom Bracton saith thus;

(a) Item esto quod hæres sit astrarius, vel quod aliquis antecessor restituat hæredi in vita sua hæreditatem, & se dimiserit, videtur quod nullo tempore iacebit hæreditas, & ideo quod nec relevari possit, nec debet nec relevium dari. (b) For the benefit, and safetie of right heires contra partus suppositos, the Law hath prouided remedy by the writ de ventre inspiciendo, whereof the rule in the Register is this; Nota si quis habens hæreditatem duxerit aliquam in vxorem & postea moriatur ille sine hærede de corpore suo exeunte, per quod hæreditas illa fratri ipsius defuncti descendere debeat, & vxor dicit se esse pregnantem de ipso defuncto cum non sit, habeat frater & hæres breve de ventre inspiciendo. It seemeth by Bracton and Fleta which followed him, that this writ doth lye, Vbi vxor alicuius in vita viri sui se pregnantem fecit cum non sit, vel post mortem viri sui se pregnantem fecit cum non sit ad exheredationem veri hæredis, &c. ad quærelam veri hæredis per præceptum domini regis, &c. which is to be vnderstood according to the rule of the Register: when a man hauing lands in fee simple dieth, and his wife soone after marrieth againe, and faine her selfe with childe by her former husband, in this case though shee be married, the writ de ventre inspiciendo doth lye for the heire. But if a man seised of lands in fee (for example) hath issue a daughter, who is heire apparant, she in the life of her father cannot haue this writ for diuers causes; first because she is not heire, but heire apparant, for as hath beene said nemo est hæres viventis, and this writ is giuen to the heire to whom the land is discended. And both Bracton and Fleta saith, that this writ lieth ad quærelam veri hæredis, which cannot be in the life of his ancestor, and herewith agreeth Britton and the Register. Secondly, the taking of a husband in the case aforesaid being her owne act, cannot barre the heire of his lawfull action once vested in him. Thirdly, the Law doth not giue the heire apparant any writ, for it is not certaine whither he shall be heire, solus deus facit hæredes. Fourthly, the inconuenience were too great if heires apparant in the life of their ancestor should haue such a writ to examine and trie a mans lawfull wife in such sort as the writ de ventre inspiciendo doth appoint, and if she should be found to be with childe, or suspect, then shee must be remoued to a Castle and there safely kept vntill her deliuery, and so any mans wife might bee taken from him against the lawes of God and man.

The words of the writ de ventre inspiciendo make this euident, Rex vic: salutem, monstrauit nobis A. quod cum R. *quæ fuit vxor Clementis* B. pregnans non sit, ipsa falsò dicit se esse pregnantem de eodem Clemente, *ad exhæredationem* ipsius A. desicut terra quæ fuit eiusdem C. *ad ipsum A. iure hæreditario discendere debeat* tanquam *ad fratrem & hæredem* ipsius C. si prædict R. prolem de eo non habuerit, &c. but this rather belongs to the treatise of originall writs, and therefore thus much herein shall suffice.

And it is to be obserued that euery word of Littl: is worthy of obseruation, first (Heires) in the plurall number, for if a man giue land to a man and to his heire in the singuler number, he hath but an estate for life, for his heire cannot take a fee simple by discent, because he is but one, and therefore in that case his heire shall take nothing. Also obseruable is this coniunctiue (Et), For if a man giueth lands to one, To haue & to hold to him or his heires, he hath but an estate for life for the vncertaintie. (Ses, suis) If a man giue land vnto two, To haue and to hold to them two & hæredibus (c) omitting suis, they haue but an estate for life for the vncertainty, whereof more hereafter in this Section. But it is said if land be giuen to one man & hæredibus, omitting suis, that notwithstanding a fee simple passeth, but it is safe to follow Littleton.

¶ (d) *Et ses assignes.* Assignee, commeth of the verbe assigno. And note there be assignes in Deede, and assignes in Law, whereof see more in the chapter of Warrantie, Sect. 733.

¶ *Ceux parolx (ses heires) tantsolement font lestate denheritance en touts feoffments & grants.* (e) Si autem facta esset donatio, vt si dicam, do tibi talem terram, ista donatio non extendit ad hæredes sed ad vitam donatoris, &c. (f) Here Littleton treateth of purchases by naturall persons, and not of bodies politique or corporate; (g) for if lands bee giuen to a sole body politique or corporate, (as to a Bishop, Parson, Vicar, master of an Hospitall, &c.) there to giue him an estate of inheritance in his politique or corporate capacitie, he must haue these words, To haue and to hold to him and his successors, for without these words Successors in those cases there passeth no inheritance, for as the heire doth inherite to the ancestor, so the successor doth succeed to the predecessor and the executor to the testator. (h) But it appeareth here by Littleton that if a man at this day giue lands to I.S and his successors, this createth no fee simple in him, for Littleton speaking of naturall persons saith that these words (his heires) make an estate of inheritance in all Feoffments and Grants whereby he excludeth these words (his successors) (i) And yet if it be in an ancient grant it must bee expounded as the Law was taken at the time of the grant. (k) A Chantry priest incorporate tooke a Lease to him

(a) *Bract. lib. 2. fo. 85. Hereof p. 8. E. 1. Ro. 80. de Banco. Mirror cap. 2. §. 18. Britton 151. b.*
(b) *Regist. fo. 227. Bracton. li. 2. fo. 69. Britton. fo. 165. Fleta lib. 1. ca. 14.*
Britton. fo. 165. b. Regist. vbi supra.
Vid. Bracton Britton. & Fleta vbi supra. Regist. vbi supra. Bracton and Fleta vbi supra haue (ad exheredationem.)
(d) *Lib. 5. fo. 96. 97. Brit. fo. 28. H. 8. Diet. Pl. Com. 287. 288.*
(c) *Bract. lib. 2. cap. 39 fo. 92. b. Brit. ca. 39. fo 99. b. Fleta. lib. 6. ca. 1. 2. & lib. 3. cap 2. 20. H. 6. 35. 36. 19. H. 6. 17. 22. 74. 22. E. 4. 16. b. 4. E. 6. pl com 26.*
(f) *Vid. Sect 413.*
(g) *7. E. 3. 25. Vid Sect. 686. 25. E. 3. 35. Bract lib. 2. fo. 62. b. Vid. Sect 413*
(h) *Pl. Com 242. Seignior Berkleys case.*
(i) *Vid. Britt. fo. 86 121. & 130. 17. E. 3. 25. b. 23. H. 6. 22. 10. H. 7. 13. 14. 9. H. 7. 11. 16. H. 7. 9. 15. E. 4 13. 14. H. 6. 12. 35. H. 6. 54. 24. Ass. 14. 40. Ass 21. Ter. 5. E. 3. Ro. 4. in Scaccario. 3. E. 3. 33 7. E. 3. 40. 11. H. 4. 84. 12. H. 4. 12. 18. E. 3 Coniusans 39. b. 5. E. 4. 121. 38 E. 3. 4. Lib 9. fo. 28. in Case. de Abb. de Strata Marcella.*
(c) *10. H. 6. 7. 22. H. 6. 15. Pl. Com. 28 b. 22. E. 4. 16. 2. H. 4. 13. 20. E. 3. br. 377.*

him and his ſucceſſors for a hundred yeares, and after tooke a releaſe from the Leaſor to him and his ſucceſſors, and it was adiudged that by the releaſe he had but an eſtate for life, for he had the Leaſe in his naturall capacitie for it could not goe in ſucceſſion, and (his ſucceſſors) gaue him no eſtate of inheritance for want of theſe words (his heires.) (l) If the King by his Letters patents giueth lands Decano & Capitulo, habendem ſibi & hæredibus & ſucceſſoribus ſuis, In this caſe albeit they be perſons in their naturall capacitie to them and their heires, yet becauſe the Grant is made to them in their politique capacitie, it ſhall enure to them and their ſucceſſors. And ſo if the King doe grant lands to I.S. Habendum ſibi & ſucceſſoribus ſiue hæredibus ſuis, this grant ſhall enure to him and his heires.

(l) 18.H.6.11.b. &c. adiudge.

(m) B. hauing diuers ſonnes and daughters A. giueth lands to B. & Liberis ſuis & alour heires, the father and all his children doe take a fee ſimple toyntly by force of theſe words (their heires) but if he had no childe at the time of the feoffment the childe borne afterward ſhall not take.

(m) 15.E.3.tit. Counterplea de Voucher. 43. 37.H.6.30.11 E.4.2.

Theſe words (his heires) doe not only extend to his immediate heires, but to his heires remote, and moſt remote borne and to be borne, (n) Sub quibus vocabulis (hæredibus ſuis) omnes hæredes propinqui comprehenduntur, & remoti, nati, & naſcituri, And hæredum appellatione veniunt hæredes hæredum in infinitum. And the reaſon, wherefore the Law is ſo preciſe to preſcribe certaine words to create an eſtate of inheritance, is for auoyding of vncertainty, the mother of contention and confuſion.

(n) *Fleta lib.*3.*ca.*8. *Pl.Com.*163.

There be many words ſo appropriated, as that they cannot be legally expreſſed by any other word, or by any periphraſis, or circumlocution: Some to eſtates of Lands, &c. as here and in (a) other places of our Author. In this place theſe words tantſolement, not ſolement alone, but tantſolement all only; .i. ſolummodo, or duntaxat, are to be obſerued; (b) Some to tenures; (c) Some to perſons, (d) Some to offences; (e) Some to formes of originall writs either for recouery of right, or remouing, or redreſſe of wrong; (f) Some to warrantie of Land. Theſe haue I touched for examples, I leaue others to the ſtudious reader to obſerue, and adde holding this for an vndoubted verity, that there is no knowledge, caſe, or point in Law, ſeeme it of neuer ſo little account, but will ſtand our ſtudient in ſtead at one time or other, and therefore, in reading, nothing to be pretermitted.

(a) *Sect.*17.62.133.
(b) *Sect.*156.161.
(c) *Sect.*184.
(d) *Sect.*190.194.746.
(e) *Sect.*9.67.194.204.234. 236.241.405.485.478. 651.655.646.620.614.637 674.692.
(f) *Sect.*733.

¶ *Font leſtate.* Status dicitur a ſtando, **becauſe it is fixed, and permanent.** The Iſle of Man, which is no part of the kingdome, but a diſtinct territorie of it ſelfe, hath beene granted by the great Seale to diuers ſubiects and their heires. (g) It was reſolued by the Lord Chancellor, the two chiefe Iuſtices and chiefe Baron, that the ſame is an eſtate diſcendible according to the courſe of the Common law, for whatſoeuer ſtate of inheritance paſſe vnder the Great Seale of England, it ſhall be diſcendible according to the rules, and courſe of the Common Law of England.

(g) *Tr.*40.*Eliz. in le Counte de Derbyes caſe, by the Lo: Chancellor, les 2. chiefe Iuſtices & chiefe Baron.*

¶ *En touts feoffments & grants.* **Here hee giueth the feoffment the** first place, as the ancient and the moſt neceſſary conueyance, both for that it is ſolemne and publique, and therefore beſt remembred and proued, (g) and alſo for that it cleareth all diſſeiſins, abatements, intruſions, and other wrongfull or defeaſible eſtates, where the entry of the feoffor is lawfull, which neither fine, recouery, nor bargaine and ſale by Deede indented and inrolled doth. And here is implyed a diuiſion of fee, or inheritance, viz, (h) into corporeall (as Lands and tenements which lye in liuery) comprehended in this word feoffment, and may paſſe by liuery by Deed, or without Deed, which of ſome is called hæreditas corporata, and incorporeall, (which lye in grant, and cannot paſſe by liuery, but by deede, (as Aduowſons, Commons, &c. and of ſome is called hæreditas incorporata) and, by the deliuery of the Deed, the freehold, and inheritance of ſuch inheritance, as doe lye in grant, doth paſſe) comprehended in this word Grant. And the Deede of incorporeate inheritances doth equall the liuery of corporeat. And therefore Littleton ſaith, in all **Feoffments and Grants.** Hæreditas, alia corporalis, alia incorporalis: Corporalis eſt, quæ tangi poteſt & videri, incorporalis quæ tangi non poteſt, nec videri.

(g) *Vid.Sect.*59.*&*.66.
(h) *Mirror.ca.*2.§.15.*& ca.*5.§.1. *Bract.lib.*2 *fo.*53. 366.368. *Fleta lib.*3 *ca.* 1.2.15 *Brit.*84.87.*a.* *& fo* 63.101 102.141.142. *agreeth herewith Pl.Com.* 171. *Hill & Grange.*

Feoffment **is derined of the word of art** feodum, quia eſt donatio feodi, **for the ancient writers of the Law called a feoffment** donatio, **of the verbe** do **or** dedi, **which is the apteſt word of feoffment. And that word** Ephron **vſed,** * **when he enfeoffed** Abraham, **ſaying, I giue thee the field of** Machpelah **ouer againſt** Mamre, **and the Cane therein I giue thee, and all the trees in the field and the borders round about, all which were made ſure vnto** Abraham **for a poſſeſſion, in the preſence of many witneſſes.**

*For the Antiquitie of Feoffments. See the ſecond part of the Inſtitutes Marlebridge ca.*9 8.*E.*3.24.18 *H.*6.24. 39.*H.*6.39. * *Geneſis* 23.

By a Feoffment the corporeate fee is conueyed, & it properly betokeneth a conueyance in fee, as our Author himſelfe hereafter ſaith, * **in his chapter of Tenant for life. And yet ſometime improperly it is called a feoffment when an eſtate of freehold only doth paſſe,** Done eſt noſme generall plus que neſt feoffment, car done eſt generall a touts choſes moebles & aient moebles, feoffment eſt riens forſque del ſoyle. **And note there is a difference** inter cartam & factū, **for carta is**

* *Vid.Sect.*59. *Britt.ca.* 34. 44.*E.*3.41.

*See more of feoffment Sect.*60. *See of Faitum. Sect.*259.

entended a Charter which doth touch inheritance, and so is not factum vnlesse it hath some other addition.

Grant, Concessio, is properly of things incorporeall which (as hath beene said) cannot passe without Deede. And here it is to be obserued (that I may speake once for all) that euery Period of our Author in all his three bookes containe matter of excellent learning, necessarily to be collected by implication, or consequence, for example hee saith here, that these words (his heires) make an estate of inheritance in all feoffments and grants, he expressing feoffments and grants, necessarily implyeth, that this rule extendeth not, first to Last wills and testaments, for thereby, (i) as he himselfe after saith, an estate of inheritance may passe without these words (his heires) (k) As if a man deuise 20. acres to another, and that he shall pay to his executors for the same tenne pound, hereby the deuisee hath a fee simple by the intent of the deuisor, albeit it be not to the value of the land. (l) So it is if a man deuise lands to a man imperpetuum, or to giue, and to sell, or in feodo simplici, or to him and to his assignes for euer, In these cases a fee simple doth passe by the intent of the Deuisor, but if the deuise bee to a man and his Assignes without saying (for euer) the Deuisee hath but an estate for life. (m) If a man deuise land to one & sanguini suo that is a fee simple, but if it be semini suo, it is an estate taile

(n) Secondly, that it extendeth not to a fine sur conusans de droit come ceo que il ad de son done, by which a fee also may passe without this word (heires) in respect of the height of that fine, and that thereby is implyed that there was a precedent gift in fee.

Thirdly, Not to certein Releases, and that three manner of wayes, (o) first when an estate of inheritance passeth and continueth, as if there be three coparceners or ioyntenants, & one of them release to the other two, or to one of them generally without this word (heires) by Litt: owne option they haue a fee simple as appeareth hereafter. Secondly, by release (p) when an estate of inheritance passeth & continueth not, but is extinguished, as where the Lord releases to the tenant or the grantee of a rent, &c. release to the tenant of the land generally all his right, &c. hereby the Seigniorie, rent, &c. are extinguished for euer, without these words (heires.) Thirdly (q) when a bare right is released, as when the disseisee release to the disseisor all his right, he neednot saith our Author in another place) speake of his heires. But of all these, and the like cases, more shall be treated in their proper places, Fourthly, not to a Recouery, A. seised of land suffereth B. to recouer the land against him by a common recouery where the iudgement is quòd prædictus B. recuperet versus præd. A tenementa prædicta cum pertin, yet B. recouereth a fee simple without these words (heires) for regularly euery recoueror recouereth a fee simple. Fiftly, not to a creation of Nobilitie by writ, for when a man is called to the vpper house of Parliament by writ, hee is a Baron and hath inheritance therein without the word (heires) yet may the King limit the generall state of inheritance created by the Law and custome of the Realme to the heires males, or generall, of his body by the writ, as he did to Bromflete who in 27. H.6. was called to Parliament by the name of the Lo: Vescye, &c. with the limitation in writ to him and the heires males of his body, but if he be created by patent, he must of necessitie haue these words (his heires) or the heires males of his body, or the heires of his body, &c. otherwise he hath no inheritance. The first creation of a Baron by patent that I finde was of Iohn Beauchampe of Holte created Baron by patent in 11. R.2. for Barons before that time were called by writ. And it is to be obserued, that of ancient times Earles, &c. were created by girding them with a sword, and nominating him Earle, &c. of such a County or place and this with a calling of him to Parliament by writ, by that name was a sufficient creation of inheritance.

But out of this rule of our Author the Law doth make diuers exceptions (& exceptio probat regulam) for sometime by a feoffment a fee simple shall passe without these words (his heires.) For example, first, (r) if the father infeoffe the sonne, To haue and to hold to him and to his heires, and the sonne infeoffeth the father as fully as the father enfeoffed him, by this the father hath a fee simple, quia verba relata hoc maximè operantur per referentiam vt in esse videntur. (s) Secondly, in respect of the consideration, a fee simple had passed at the Common Law without this word (heires) and at this day an estate of inheritance in tayle, as if a man had giuen land to a man with his Daughter in Francke marriage generally, a Fee simple had passed without this word (heires) for there is no consideration so much respected in Law, as the consideration of marriage, in respect of Alliance, and posterity. (t) Thirdly, if a feoffment or Grant be made by Deed to a Mayor and communalty or any other Corporation aggregate of many persons capable, they haue a fee simple without the word (Successors) because in iudgement of the Law they neuer die. (u) Fourthly, in case of a sole corporation a fee simple shall sometime passe without this word (successors) as if a feoffment in fee be made of land to a Bishop, To haue and to hold to him in libera eliemosina, a fee simple doth passe without this word (Successors) (w) And so if a man giue lands to the King by Deede inrolled, a fee simple doth passe without these words (successors or heires) because in iudgement of Law the King neuer dieth. Fiftly, in Grants sometimes an Inheritance shall passe without this word (heires)

Lib.3 fo 62. in Lincolne Colle gecase.

(i) Litt. lib.3.ca. de Attorn. Sect 5.8 6.
4.E 6.Estates.Br 78.
29 H 8.Testaments 18.
22.Eliz.Dier 371.
Temps H.8 tit. Conscience Br 25.
(k) 21.E.3.16.34.H.6.7.
19.H.8.9.b.3.fo.21.inBoraston case,lib.6.fo.15.17.lib. 10.fo 67.
(l) Vid.Sect.585.
(m) Mich.40 & 41.Eliz. in Error Int. Downhal & Catesby adiudge. Brooke tit. taile 21.
(n) Lib.1.fo.100 Shellyes case. 42.E.3.7.
19.H.6.17.b.22.b.
Pl.Com.248.
(o) Litt.lib.2.ca.tenant in Common.Sect.304 305. cap. Attorn.Sect.374.
Dier 9.Eliz. 263.
(p) Litt lib.3.ca. Releases, Sect.479.480.
20.H.6.17.19.H.6.17.22.
(q) Litt ca.Releases Sect.467.

27.H.6.Lo.Vescies case.

(r) 29.Ass.12.41.E.3.tit. Feoffments & fatts 254.
14.H.4.13.34.E.3.
Auowry.258.
(s) Vid.Sect.17.
12.H.4.19.in Formdon.
(t) 8.E.3.27.11.H.7.12.
22.E.4. 11.H.4.84.
2.H.4.13.

(u) 19.H.6.74.20.H.6.36.

(w) Pl.com.La.Berkleyes Case.

(heires)

(heires)(x) as if partition be made betweene coperceners of Lands in fee ſimple, and for oſweety of partition the one grant a rent to the other generally, the grantee ſhal haue a fee ſimple without this word (heires) becauſe the grantor hath a fee ſimple in conſideration wherof he granted the rent, ipſæ etenim leges cupiunt vt jure regantur. Sixtly, by the Forreſt law if an aſſart be granted by the King at a Juſtice ſeat (which may be done without Charter) to another Habendum & tenendū ſibi imperpetuū, he hath a fee ſimple without this word (heires)(y) for there is a ſpeciall Law of the Forreſt, as there is a law Marſhall for wars, and a Marine law for the ſeas. (z) And this rule of our Author extendeth to the paſſing of eſtates of inheritances in exchanges, releaſes, or confirmations that enure by way of enlargement of eſtates, warranties, bargaine and ſales by Deed indented & inrolled, & the like in which this word (heires) is alſo neceſſary for they doe tant amount to a feoffment or grant or ſtand vpon the ſame reaſon that a feoffment or grant doth, for like reaſon doth make like law, vbi eadem ratio, ibi idem jus. And this is to be obſerued throughout all theſe three bookes, that where other caſes fall within the ſame reaſon, our Author doth put his caſe but for example, for ſo our Author himſelfe in another place * expla-neth it, ſaying, Et memorandū q̄ en touts auters caſes coment que ne ſont icy expreſſement moves & ſpecifies ſi ſont en ſemblable reaſon ſont en ſemblable ley. And here our Author is to bee vnderſtood to ſpeake of heires when they are inheritable by diſcent, for they are capable of land alſo by purchaſe, and then the courſe of diſcent is ſometime altered, as if lands of the nature of Gauilkinde be giuen to B. and his heires hauing iſſue diuers ſonnes, all his ſonnes after his deceaſe ſhall inherite, but if a leaſe for life be made, the remainder to the right heires of B. and B. dieth, his eldeſt ſonne only ſhall inherite, for he only to take by purchaſe is right heire by the Common law. So note a diuerſitie betweene a purchaſe and a diſcent, but where the remainder was limitted to the right heires of B. it need not to be ſaid and to their heires, for being plurally limitted it includeth a fee ſimple, and yet it reſteth but in one by purchaſe.

Out of that which hath beene ſaid it is to be obſerued, that a man may purchaſe lands to him and his heires by Ten manner of conueyances, (for I ſpeake not here of eſtoppells.) First by Feoffment, ſecondly by Grant. (of which two our Author here ſpeaketh.) Thirdly by Fine which is a feoffment of record. Fourthly by common Recouery which is a common conueyance and is in nature of a feoffment of record. Fiftly by Exchange which is in nature of a grant. Sixtly, by Releaſe to a particular tenant. Seuenthly by Confirmation to a particular tenant both which are in nature of Grants. Eightly, by grant of a reuerſion or remainder with attornment of the particular tenant, of all which our Author ſpeaketh hereafter. Ninthly, by bargaine and ſale by Deede indented and inrolled ordained by ſtatute ſince Littleton wrote. Tenthly, by deuiſe by cuſtome of ſome particular place, as he ſheweth hereafter, and ſince he wrote, by will in writing generally by authority of Parliament.

What words are apt words for a feoffment or grant Vid. §. 531. Our Author ſpeaketh of feoffments and grants, wherby is implyed lawfull conueyances, & therfore this rule extendeth not to diſſeiſins, abatements or intruſions into lands or tenements or to vſurpations to aduouſons, &c. in which caſes eſtates in fee ſimple are gained by the act and wrong of the diſſeiſors, abators, intruders and vſurpers, and if a diſſeiſin abatement or intruſion be made to the vſe of another if cēy que vſe agreeth thereunto in pays by this bare agreement he gaineth a fee ſimple without any liuery of ſeiſin or other ceremony.

(x) 29. Aſſ 23. 15. H. 7. 14. 2. H. 7. 5. 11. H. 4. 3. 21. E. 3. 1. 21. Aſſ.

(y) 40. H. 7. 7.

(z) 22. E. 3. 3. 45. E. 3. 20. 9. E 4. 21. Lib. 4. fo. 121. Buſtards caſe. Vid. Sect. 465. 469 & 10. 19. H 6. 17. 22. 19. E. 2. garr. 85.

* Sect. 301.

27. H. 8. ca 16. 32 H. 8. ca. 2. 34. H. 8. ca. 5.

Sect 531. 37. Aſſ. p. 8. 38. Aſſ. p. 9. 12. E. 4. 9. &c.

Section 2.

ET ſi home pchaſe tres en fee ſimple & deuy ſans iſſue chescun q̄ eſt ſon prochine coſin collateral del entire ſanke, de quel pluis long degree q̄ il ſoit, poet inheriter & auer m̄ la tre come heire a luy.

AND if a man purchaſe land in fee ſimple and die without iſſue hee which is his next coſen collaterall of the whole blood, how farre ſo euer hee bee from him in degree, may inherit & haue the land as heire to him.

LIttleton ſheweth here who ſhalbe heire to lands in fee ſimple, for hee entendeth not this caſe of an eſtate taile, for that he ſpeaketh of an heire of the whole blood for that extendeth not to eſtates in taile as ſhall bee ſaid hereafter in this chapter, Section 6.

¶ *Prochein coſin collaterall.* Neyther excludeth he brethren or ſiſters, becauſe he hath a ſpeciall caſe concerning them in this chapter, Sect. 5. and in his chapter of parceners, but this is intended where

where a man purchase lands and dieth without issue, and having neither brother nor sister, then his next cousin collaterall shall inherite. So as here is implyed a division of heires, viz. lineall (who euer shall first inherit,) and collaterall, (who are to inherite for default of lineall.) For in discents it is a maxime in law quod linea recta semper praefertur transuersali. Lineall discent is conueyed downward in a right line, as from the grandfather to the father, from the father to the sonne, &c. Collaterall discent is derined from the side of the lineall, as grandfathers brother, fathers brother, &c. Prochein cousin collaterall enheritera doth giue a certaine direction to the next cosin to the sonne, and therefore the fathers brother and his posterity shall inherite before the grandfathers brother and his posterity. Et sic de ceteris, for propinquior excludit propinquum & propinquus remotum, & remotus remotiorem.

Glanvil lib. 7 ca. 3. 4.
Bract. lib. 2. ca. 30. fo 65.
Britt. ca 119.
Fleta lib. 6. cap. 1. & 2.

Bract lib 2. ca. 30 f. 64.
Fleta lib. 5. ca 5 & lib 6 ca 1. & 2.
Britt ca 119.
Mirror 11. ca. 1. §. 3.
30. Ass. p. 47.

Upon this word (Prochein) I put this case. One hath issue two sonnes A. and B. and dieth, B. hath two sonnes C. and D. and dieth. C. the eldest sonne hath issue and dieth: A. purchaseth lands in fee simple and dieth without issue, D. is his next cousin, and yet shall not inherite, but the issue of C. for he that is inheritable is accounted in law next of blood. And therefore here is vnderstood a division of next, viz. next, iure repraesentationis, and next, iure propinquitatis, that is, by right of representation and by right of propinquitie. And Littleton meaneth of the right of representation, for legally in course of discents he is next of blood inheritable. And the issue of C. doth represent the person of C. and if C. had liued he had beene legally next of blood. And whensoeuer the father if he had liued, should haue inherited, his lineall heire by right of representation shall inherite before any other, though another be iure propinquitatis nearer of blood. And therefore Littleton intendeth his case of next cosin of blood immediately inheritable. So as this produceth another division of next of blood, viz. immediatly inheritable, as the issue of C. and mediatly inheritable as D. if the issue of C. die without issue, for the issue of C. and all that line be they neuer so remote shall inherite before D. or his line, and therefore Littleton saith well de quel pluis long degree que il soit. And here ariseth a diuersity in law betweene next of blood inheritable by discent, and next of blood capable by purchase. And therefore in the case before mentioned if a Lease for life were made to A. the remainder to his next of blood in fee. In this case as hath beene said D. shall take the remainder, because he is next of blood and capable by purchase, though he be not legally next to take as heire by discent.

19. R. 2. tit. ga. 170.

30. Ass. p. 47.

Section 3.

¶ *Vncore le pier est pluis prochein de sanke.* And therefore some doe hold vpon these words of Littleton that if a Lease for life were made to the sonne the remainder to his next of blood that the father should take the remainder by purchase, and not the vncle, for that Littleton saith the father is next of blood, and yet the vncle is heire. As if a man hath issue two sonnes, and the eldest sonne hath issue a sonne and die, a remainder is limited to the next of his blood, the younger sonne shall take it, yet the other is his heire

3. E. 6. tit. Administr. Br. 47. Ratcliffes case vbi supra. See after in the chapter of Socage.

(p) *Est vn Maxime en le Ley que enheritance poet linealment discender mes nemy ascender.*

(p) Fl. Com. 293. b. Osborns case.

Maxime, i. A sure foundation or ground of art, and a

¶ Mes si soit pier & fits, & le pier ad vn frere que est vncle a le fits, & le fits purchase tre en fee simple & mor sans issue viuant son pier, luncle auera la terre come heire al fits & nemy le pier, vncore le pier est pluis prochein de sank; pur ceo que est vn maxime en le ley, Que enheritãce poet linealment discender, mes nẽy ascender. Uncor si le fits en tiel case mor sans issue, & son vncle entra en la tre come heire a le

But if there bee father & son, & the father hath a brother that is vncle to the son, & the son purchase land in fee simple, and die without issue, liuing his father, the vncle shal haue the land as heire to the son, & not the father, yet the father is neerer of blood; because it is a maxime in law, That inheritance may linealy discend, but not ascend. Yet if the son in this case die without issue, and his vncle enter into the land as heire to the

conclusion

fits (ſi come il deuoit ꝑ la ley) & apres luncle deuia ſans iſſue, viuant le pier, donqs le pier auera la terre cõe heire al vncle, & nẽy cõe heire a ſon fits, pur ceo que il veigne al terre ꝑ collaterall diſcent & nẽy ꝑ lineall aſcention.

ſonne (as by law hee ought) and after the vncle dieth without iſſue, liuing the father, the father ſhall haue the land as heire to the vncle, & not as heire to his ſon, for that hee commeth to the land by collateral diſcent & not by lineall aſcent.

conclusion of reaſon ſo called (q) quia maxima eſt eius dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and vncontrolable as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum or an Axiome, and it were too much curioſitie to make nice diſtinctions betweene them. And it is

(q) *Pl.Com.27.b.*

(r) *S.fl.90.648.*

well ſaid in our bookes, (ſ) neſt my a diſputer lancient principles del ley. I neuer read any opinion in any booke old or new againſt this Maxime but only in lib.rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit pater aut mater eius in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſint, ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint hæreditario ſuccedant, & dum virilis ſexus extiterit, & hæreditas abinde ſit, fæmina non hæreditat'. But all our ancient Authors and the conſtant opinion euer ſince doe affirme the maxime.

(ſ) 12.H.4.
Glanuill.lib.7.ca.1.
Bract.lib.2.cap.29.
(t) *Lib.Rub.cap.70.*

By this maxime and the concluſion of his caſe, only lineall aſcention in the right line is prohibited, and not in the collaterall, (u) Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter diſcendit, nunquam quidem naturaliter aſcendit, diſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſuerſali, & nunquam reaſcendit ea via qua diſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui propter defectum hæredum inferius prouenientium; ſo as the lineall aſcent is prohibited by law, and not the collaterall. And in prohibiting the lineall aſcent, the Common Law is aſſiſted with the Law of the 12. tables.

Britt.ca.119.
Fleta lib.6.cap.1.
Numb.ca.27.
Ratcl ff. caſe vbi ſupra.

Here our Author for the confirmation of his opinion draweth a reaſon and a proofe (as you haue perceiued) from one of the maximes of the Common law: Now that I may here obſerue it once for all, his proofes and arguments, in theſe his three bookes, may bee generally deuided into two parts, viz. from the Common law and from Statutes, of both which, and of their ſeuerall branches I ſhall giue the ſtudious reader ſome few examples and leaue the reſt to his diligent obſeruation.

From the Common Law his proofes and arguments are drawne from 20. ſeuerall fountaines or places.

(a) Firſt from the Maxims, Principles, Rules, Intendment, and Reaſon of the Common Law, which indeede is the Rule of the Law as here, and in other places our Author doth vſe.

(b) Secondly, from the bookes, records, and other authorities of Law cited by him, Ab authoritate, & pronunciatis.

(c) Thirdly, from originall writs in the Regiſter, à reſcriptis valet argumentum.

(d) Fourthly, from the forme of good pleading.

(e) Fiftly, from the right entry of iudgements.

(f) Sixtly, à præcedentibus approbatis & vſu, from approued Precedents and Vſe.

(g) Seuenthly, a non vſu, from not vſe.

(h) Eightly, ab artificialibus argumentis, conſequentibus & concluſionibus, artificiall arguments conſequents and concluſions.

Ninthly, (i) a communi opinione juriſprudentum, from the common opinion of the ſages of the Law.

Tenthly, (k) ab inconuenienti, from that which is inconuenient.

Eleuenthly, (l) a diuiſione from a diuiſion vel ab enumeratione partium from the enumeration of the parts.

Twelfthly, (m) a maiore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) a ſimili, (p) a pari.

13. (p) ab impoſſibili from that which is impoſſible.

14. (q) A fine from the end.

15. (*) Ab vtili vel inutili from that which is profitable or vnprofitable.

16. (r) Ex abſurdo for that thereupon ſhould follow an abſurdity quaſi à ſurdo prolatum, becauſe it is repugnant to vnderſtanding and reaſon.

17. (ſ) A natura et ordine naturæ, from nature or the courſe of nature.

18. (t) Ab

(a) *Sect.5.8.90.96.52.53.57.59.65.99.130.146.156.169.178.231.293.302.352.360.376.377.396.410.440.441.346.347.462.43.*
(b) *Sect.20. where a number other are quoted.*
(c) *Sect.67.132.170.234.241.263.613.614.*
(d) *Sect.58.170.183.369.*
(e) *Sect.248.249.*
(f) *Sect.88.74.76.145.332.371.372.445.*
(g) *108.733.*
(h) *Sect.170.264.283.302.429.464.629.633.686.340.418.613.686.739.*
(i) *Sect.697.59.104.288.332.478.*
(k) *Sect.87. where many others are quoted.*
(l) *Sect.13. where many more are quoted but fee chiefly, Sect.381.*
(m) *Sect.438.439.441.*
(n) *Sect.18.(o)301. &c.*
(p) *291.298.409. &c.*
(p.) *129.440.*
(q) *Sect.46.194.*
(*) *Sect.360.*
(r) *Sect.722.*
(ſ) *Sect.114.223.129.211.107.108.*

18 (t) Ab ordine religionis, from the order of Religion.
19. (u) A communi præsumptione from a common presumption.
20. (w) A lectionibus iurisprudentium, from the readings of learned men of Law.

From Statutes his arguments and proofes are drawne;

1. (x) From the rehearsall or preamble of the Statute.
2. By the bodie of the Law diuerslie interpreted.

Sometime by other parts of the same Statute, which is benedicta expositio, & ex visceribus causæ.

(y) Sometime by the reason of the Common Law. But euer the generall words are to be intended of a lawfull Act, (z) and such interpretation must euer be made of all Statutes, that the innocent or he in whom there is no default may not be damnified.

¶ *En la ley.* **There bee** diuers Lawes **within the Realme of** England. As first, (a) Lex Coronæ, the Law of the Crowne.

2. (b) Lex & consuetudo parliamenti. Ista lex est ab omnibus quærenda, à multis ignorata, à paucis cognita.

3. (c) Lex naturæ, the Law of nature.

4. (d) Communis lex Angliæ, the Common Law of England sometime called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute Law. Lawes established by authoritie of Parliament.

6. (f) Consuetudines. Customes reasonable.

7. (g) Ius belli. The Law of Armes, Warre, and Chiualrie, in republica maximè conseruanda sunt iura belli.

8. (h) Ecclesiasticall or Canon Law in Courts in certaine Cases.

9. (i) Ciuill Law in certaine cases not only in Courts Ecclesiasticall, but in the Courts of the Constable and Marshall, and of the Admiraltie, in which Court of the Admiraltie is obserued la ley Oleron, anno 5. of Richard the first, so called, because it was published in the Isle of Oleron.

10. (k) Lex forestæ. Forrest Law.

11. (l) The law of Marque or reprisall.

12. (m) Lex mercatoria, Merchant, &c.

13. (n) The Lawes and Customes of the Isles of Iersey, Gernesey and Man.

14. (o) The Law and priuiledge of the Stanneries.

15. (p) The Lawes of the East West, and middle Marches which are now abrogated.

But hereof this little taste for our Student, that he may bee capable of that which hee shall reade concerning these and others in Records, and in our Bookes, and orderly obserue them, shall suffice.

¶ *Et son vncle enter en la terre.* **For if the vncle in this case doth** not enter into the land, then cannot the father inherite the land, for there is another maxime in law herein implyed. (q) That a man that claymeth as heire in fee simple to any man by discent, must make himselfe heire to him that was last seised of the actuall freehold and inheritance. And if the Vncle in this case doth not enter, then had he but a freehold in Law, and no actuall freehold, but the last that was seised of the actuall freehold was the sonne to whom the father cannot make himselfe heire, And therefore Littleton saith, Et son vncle enter en la tẽ (sicome deuoit per la ley) to make the father to inherit, as heire to the vncle. (r) Note that true it is that the vncle in this case is heire, but not absolutely heire, for if after the discent to him the father hath issue a sonne or daughter, that issue shall enter vpon the vncle. (s) And so it is if a man hath issue a sonne and a daughter, the sonne purchaseth Land in fee and dieth without issue, the daughter shall inherit the land, but if the father hath afterward issue a sonne, this sonne shall enter into the Land as heire to his brother, and if he hath issue a daughter and no sonne, she shalbe copercener with her sister.

¶ *Sicome il deuoit per la ley.* **These words as a key doe open** the secrets of the Law, for hereupon it is concluded, that where the vncle cannot get an actuall possession by entrie or otherwise, there the father in this case cannot inherit. And therefore if an Aduowson be granted to the sonne and his heires, and the sonne dis, and this discend to the vncle, and he die before he doth or can present to the Church, the father shall not inherit, because he should make himselfe heire to the sonne which he cannot doe. And so of a Rent and the like. But if the vncle had presented to the Church, or had seisin of the rent there the father should haue inherited. For Littleton putteth his case of an entrie into Land; but for an example, If the sonne make a Lease for life, and die without issue, and the reuersion discend to the vncle, and he die, the reuersion shall not discend to the father, because in that case hee must make himselfe heire to the sonne. A, infeoffe the sonne with warrantie to him and his heires, the sonne dies, the vncle enters into the Land and dies, the father if he bee implcaded shall not take aduantage of this warrantie,

(t) Sect. 202.
(u) Sect. 440.
(w) Sect. 481.
(x) Sect. 13. &c. Sect. 731. 692. 635. 633. 441. 123. 193. 154. 142. 2.
(y) Sect. 464.
(z) Sect. 731. 685.
(a) 17. E. 3. Rot. parl. nu. 19. 25. E. 3. cap. 1. Regist. inter Extrauag. 61 &c.
(b) Commonly spoken of in Parliament Rolls.
(c) 13. E. 4. 9. Lib. 7. Calvyns case. Pl. com. Sharingtons case.
(d) The Law appeareth in our bookes and in all records.
(e) These are of record in Rolls of Parliament.
(f) Whereof you shall reade in our authors, and in our bookes.
(g) Rot. parlm. 2. R. 2. nu. 3. 13. R. 2 ca. 2.
(h) Lib. 7. Cawdries case artic. cul. super cartas. &c.
(i) 37. H. 6. 21. Forteſc. ca. 32. 13. H. 4. 4. 27. H. 8 ca. 15.
(k) Carta de Foresta &c. the ennes of the Forests.
(l) 27. E. 3. ca. 17. Wi. ca. 23. 4. H. 5. ca. 7.
(m) Mirror de Iustic. ca. 1. Bract. 334. 444. Fleta. lib. 2. ca. 51. 52. &c. 5. E. 3. 11. 38. E. 3. 7. 27. E. 3. cap. 8. Forteſc. 32. F. N. B. 117. 13. E. 4. 9. Rot. parl. 6. H. 4. nu. 43. 20. H. 7. 16. 47. E. 3. 22. 20. E. 1. Account 127. Carta me cat. 11 a 31. E. 1. rot. patent.
(n) Mich. 41. E. 3. coram rege in thesaur. 1. E. 3. fol. 7. 12. H. 8 fol. 5. Rot. parl. an. 20. E. 2. Lib. 7. Calvyns case fol. 21. Regist. fol. 22.
(o) 50. E. 3. Rot. parl. 50. E. 3. Ro. patent. &c.
(p) 31. H. 6 ca. 3. 4. Ia. ca. 1.
(q) 11. H. 4. 11. 10. aſſ. 27. 34 aſſ. p. 20. 19. L. 2. quar. imped. 177. 45. E. 3. 13. 40. aſſ. p. 6.
(r) 11. aſſ. p. 6. Doct. & Stud. 12. b. 22. H. 6. 35.
(s) 19. H. 6. 61.

rantie, for then hee muſt vouch A. as heire to his ſonne, which hee cannot doe, for albeit the warrantie diſcended to the vncle, yet the vncle leaueth it, as hee found it, and then the father by Littletons (deuoir) cannot take aduantage of it. For Littleton Sectione 603. ſaith that warranties, ſhall diſcend to him that is heire by the Common Law, and Sect. 718 he ſaith that euery warrantie which diſcends, doth diſcend to him that is heire to him which made the warrantie by the Common Law, which proueth that the father ſhall not be bound by the warrantie made by the ſonne, for that the father cannot bee heire to the ſonne, that made the warrantie. And a warrantie ſhall not goe with tenements, whereunto it is annexed to any eſpeciall heire, but alwayes to the heire at the Common Law. And therefore if the vncle be ſeiſed of certaine lands, and is diſſeiſed, the ſonne releaſe to the diſſeiſor with warrantie, and die without iſſue, this ſhall bind the vncle, but if the vncle die without iſſue, the father may enter, for the warrantie cannot diſcend vpon him. So if the ſonne concludeth himſelfe by pleading concerning the tenure and ſeruices of certaine lands, this ſhall bind the vncle, but if the vncle die without iſſue, this ſhall not bind the father, becauſe he cannot be heire to the ſonne, and conſequently not to the eſtoppell in that caſe; but if it be ſuch an eſtoppell as runneth with the land, then it is otherwiſe.

Vid. Sect. 603. 718

Vid. Sect 735. 736. 737.

35. H. 6. 33. *John Crookes caſe*

Section 4.

¶ Et en tiel caſe, lou le fits purchaſe terre en fee ſimple, & deuie ſauns iſſue, ceux de ſon ſanke de part ſon pier enheriteront cõe heires a luy, deuant aſcun de ſanke de pt ſa mere: mes ſil nad aſcun heire de part ſon pier, donques la tre diſcendera a les heires de part la mere. Mes ſi home prent enheritrix des tres en fee ſimple, q̃ux ont iſſue fits, & deuiont, & le fits enter en les tenements, cõe fits & heire a ſa mere, & puis deuie ſans iſſue, les heires de part la mere doient enheriter les tenemts & iammes les heires de part le pier. Et ſil ny ad aſcun heire de part la mere, donque le ſeignior, de que la terre eſt tenus, auera la

AND in caſe, where the ſonne purchaſeth land in fee ſimple, and dies without iſſue, they of his bloud on the fathers ſide ſhall inherit as heires to him, before any of the bloud, on the mothers ſide. But if he hath no heire on the part of his father, then the land ſhall diſcend to the heires on the part of the mother. But if a man marrieth an inheritrix of lands in fee ſimple, who haue iſſue a ſon, and die, and the ſonne enter into the tenements, as ſonne and heire to his mother, and after dies without iſſue, the heires of the part of his mother ought to inherit, and not the heires of the part of the father. And if hee hath no heire on the part of the mother, then the Lord

¶ By this it appeareth, that our author deuideth heires into heires of the part of the father, and into heires of the part of the mother. (a) And note, it is an olde, and true Maxime in Law, That none ſhall inherit any lands as heire, but only the bloud of the firſt purchaſer. for * refert à quo fiat perquiſitum. As for example, Robert Coke taketh the daughter of Knightley to wife and purchaſeth lands to him and to his heires, and by Knightley hath iſſue Edward, none of the bloud of the Knightleys though they be of the bloud of Edward ſhall inherit, albeit hee had no kindred but them, becauſe they were not of the bloud of the firſt purchaſer, viz. of Robert Coke.

Vid. Sect. 354. *an excellent point.*

(a) *Pl. com. Sir Edward Clares caſe.* 447.

(*) *Fleta. lib.* 6. *ca.* 1. 2. *&c. Bracton lib.* 2. *fol.* 65. 67. 68. 69. *&c. Britton. ca.* 119. 24. E. 3. 50. 39. E. 3. 29. 30. 38 49. E. 3. 12. 49. *aſſ. p.* 4. 12. E. 414. *pl. com.* 445. *&* 450. 7. E. 6. *Dier* 6. 24. E. 3. 24. 37 *aſſ.* 4. 40. E. 3. 9. 42. E. 3. 10. 45. E. 3. *Releaſe* 28. 7. H. 5. 3. 4. 8. *aſſ.* 6. 35. *aſſ.* 2. 5. E. 4. 7. 3. H. 5. 21. H. 7. 33. 40. *aſſ.* 6. *Ratcliffs caſe lib.* 3. *fol.* 42.

¶ (b) *Ceux del ſank de part ſon pier.* Here it is to bee vnderſtood, that the father hath two immediate blouds in him, viz. the bloud of his father, and the bloud of his mother, both theſe blouds are of the part of the father. (c) And this made ancient Authors ſay, that if a man be ſeiſed of lands in the right of his wife, and is attainted of felonie, and after hath iſſue, this iſſue ſhould not inherit his mother, for that he could derive no bloud inheritable from the father. And both theſe blouds of the part of the father muſt bee ſpent before

(b) *Bracton. vbi ſupra. Fleta. vbi ſupra. Britton. ca* 118. 119. *pl. com.* 445. *Clares caſe. Tr.* 19. E. 1. *in banco Rot.* 25. *Lincoln. Will. Scels caſe.*

(c) *Britton. fol.* 15. *Fleta. lib.* 1. *ca.* 18. *pl. com.* 445. 446. *&c. Clares caſe.*

before the heire of the bloud of the part of the mother shall inherit, wherein euer the line of the male of the part of the father, (that is) the posteritie of such male, bee they male or female (who euer in discents are preferred) must faile before the line of the mother shall inherit, (d) and the reason of all this is for that the bloud of the part of the father is more worthy and more neere in iudgement of law, than the bloud of the part of the mother.

(d) 19. R. 2. ger 100.

Britton. ca. 118. 119. Fleta. lib. 6. ca. 2.

¶ *Deuant ascun del sanke del part del mere.* And it is to be obserued, that the mother hath also two immediate bloods in her (viz.) her fathers bloud, and her mothers bloud. Now to illustrate all this by example. Robert Fairefield sonne of Iohn Fairefield and Iane Sandie, take to wife Anne Boyes daughter of Iohn Boyes and Iane Bewpree and hath issue William Fairefield who purchaseth lands in fee. Here William Fairefield hath foure immediate bloods in him, two of the part of his father, viz. the bloud of the Fairefields, and the bloud of the Sandyes, and two of the part of his mother, viz the bloud of the Boyses, and the bloud of the Bewprees, and so in both cases vpward in infinitum. Now admit that William Fairefield die without issue, first the bloud of the part of his father, viz of the Fairefields, and for want thereof the bloud of the Sandyes (for both these are of the part of the father) if both these faile, then the heires of the part of the mother of William Fairefield shall inherit, viz. first the bloud of the Boyses, and for default thereof the bloud of the Bewprees.

terre per Escheat. En meisme le maner est, si tenemẽts discendont a le fits de part le pier, & il enter & puis mourust sans issue, cel terre discendra as heires de part le pier, & nẽy as heires de part la mere. Et sil ny ad ascun heire de part le pier, donques le seignior, de que la terre est tenus, auera la terre per Escheat. Et sic vide diuersitatem, **lou le fits purchase terres ou tenements, en fee simple, & lou il vient eins a ticls terres ou tenements per discent de part sa mere ou de part son pier.**

of whom the land is holden, shall haue the land by Escheate. In the same manner it is, if lands discend to the sonne, of the part of the father, and hee entreth, and afterwards dies without issue, this land shall discend to the heires on the part of the father, and not to the heires on the part of the mother, And if there bee no heire of the part of the father, the Lord of whom the Land is holden shall haue the land by Escheate. And so wee see the diuersitie, where the sonne purchase lands or tenements in fee simple, and where hee commeth to them by discent on the part of his mother, or on the part of his father.

It is necessary to be knowne in what cases the heire of the part of the mother shall inherite, and where not. If a man be seised of lands as heire of the part of his mother and maketh a feoffment in fee, and taketh backe an estate to him and to his heires, this is a new purchase, and if he dieth without issue, the heires of the part of the father shall first inherite. If a man so seised maketh a feoffment in fee vpon condition, and die, the heire of the part of the father which is the heire at the Common law shall enter for the condition broken, but the heire of part of the mother shall enter vpon him, and enioy the land. (m) A man so seised maketh a feoffment in fee reseruing a rent to him, and to his heires, this rent shall goe to the heires of the part of the father; but, (n) if he had made a gift in taile, or a lease for life reseruing a rent, the heire of the part of the mother shall haue the reuersion, and the rent also, as incident thereunto, shall passe with it, but the heire of the part of the mother shall not take aduantage of a condition annexed to the same, because it is not incident to the reuersion nor can passe therewith. (o) If a man had beene seised of a mannor as heire on the part of his mother, and before the statute of Quia emptores terrarum had made a feoffment in fee of parcell to hold of him by rent and seruice, albeit they be newly created, yet for that they are parcell of the Mannor, they shall with the rest of the mannor discend to the heire of the part of the mother, quia multa transeunt cum vniuersitate quæ per se non transeunt. If a man hath a rent seeke of the part of his mother, and the tenant of the land gran-

9. H. 7. 24.

(m) 7. H. 6. 4. Lib. 1. fol. 100. Shelleys case.

(n) 5. E. 2. tit. auowry. 207.

(o) 5. E. 2. auowry 207.

granteth a diſtreſſe to him and his heires, and the graunt dieth the diſtreſſe ſhall goe with the rent to the heire of the part of the mother as incident or appurtenant to the rent, for now is the rent ſecke become a Rent charge.

(p) A man ſo ſeiſed as heire on the part of his mother maketh a Feoffment in Fee to the vſe of him and his heires, the vſe being a thing in truſt and confidence ſhall inſue the nature of the land, and ſhall diſcend to the heire on the part of the mother. (q) A man hath a ſeignory as heire of the part of his mother, and the tenancy doth eſcheate, it ſhall goe to the heire of the part of the mother. If the heire of the part of the mother of land whereunto a warranty is annexed is impleaded and Vouche; and iudgement is giuen againſt him, and for him to recouer in value, and dieth before execution (r) the heire of the part of the mother ſhall ſue execution to haue in value againſt the Vouchee, for the effect ought to purſue the cauſe, and the recompence ſhall enſue the loſſe.

(p) 5.E.4.4 lib.1. fol.100. Shellyes caſe. 27.H.8. Vide Buckenhams caſe. 32.H.8. gard. Brooke.93. 13.H.7.6.

(q) 16.E.3. age.46.

Pl.Com 292.& 515. See more of this in the Chapter of Warranties.

If a man giueth lands to a man, to haue and to hold to him and his heires on the part of his mother, yet the heires of the part of the father ſhall inherit, for no man can inſtitute a new kind of inheritance not allowed by the Law, and the words (of the part of his mother) are voide, as in the Caſe that Littleton putteth in this Chapter, If a man giueth lands to a man to him and his heires males, the Law reiecteth this word males, becauſe there is no ſuch kind of inheritance, whereof you ſhall reade more in his proper place.

A man hath iſſue a ſonne, and dieth, and the wife dieth alſo, Lands are leaſed for life, the remainder to the heires of the wife, the ſonne dieth without iſſue, the heires of the part of the father ſhall inherit, and not the heires of the part of the mother, becauſe it veſted in the ſonne as a Purchaſer. And the rule of Littleton holdeth aſwell in other kind of Inheritances, as in Lands and Tenements. (ſ) And therefore if there be Lord, ſem meſne, and tenant, and the Meſne bind her ſelfe and her heires by her deed to the acquitall of the tenant, the Meſne take husband, the Tenant by his Deed granteth to the husband and his heires, that her or his heires ſhall not be bound to acquitall, the husband and wife haue iſſue, and die, this iſſue, being bound as heire to his mother, ſhall not take benefit of the ſaid grant of diſcharge, for that extends to the heires of the part of the father, & not to the heires of the part of the mother, and therefore the heire of the part of the mother was bound to the Acquitall. And thus much for the better vnderſtanding of Littletons Caſes concerning the heire of the part of the mother ſhall ſuffice.

(ſ) 38.E.3.12.

¶ *Mes ſi homeprist feme inheritrix &c.* Heere there is another maxime, (t) That whenſoeuer Lands doe diſcend from the part of the mother, the heires of the part of the father ſhall neuer inherit. And likewiſe when Lands diſcend from the part of the father, the heires of the part of the mother ſhall neuer inherit. Et ſic paterna paternis, & è conuerſo, materna maternis For more manifeſtation hereof, and of that which hereafter ſhall be ſaid touching Diſcents, ſee a Table in the end of this Chapter.

(t) 39.E.3.29. 49.E.3.12.

¶ *Auera la terre per Eſcheat.* (u) *Eſcheat*, Eſchaeta is a word of art, and deriued from the French word Eſchear (id eſt) cadere, excidere or accidere, and ſignifieth properly when by accident the Lands fall to the Lord of whom they are holden, in which Caſe we ſay the fee is eſcheated. And therefore, of ſome, Eſcheats are called excadentiæ or terræ excadentiales (w) Dominus vero capitalis loco hæredis habetur quoties per defectũ vel delictum extinguitur ſanguis ſui tenentis, loco hæredis & haberi poterit niſi per modum donationis fit reuerſio cuiuſcuque tenementi. And Ockam (who wrote in the raigne of Henry the ſecond) treating of tenures of the King, ſaith, Porro eſchaetæ vulgo dicuntur, quæ decedentibus hijs quæ de Rege tenent &c. cum non exiſtit ratione ſanguinis hæres ad fiſcum relabuntur. (x) So as an Eſcheat doe happen two manner of waies, aut per defectum ſanguinis .i. for default of heire, aut per delictum tenentis .i. for felonie, and that is by iudgement three manner of waies aut quia ſuſpenſus per collum, aut quia abiurauit regnum, aut quia vtlegatus eſt, And therefore, they which are hanged by martiall Law, in furore belli forfeit no Lands: and ſo in like Caſes Eſcheats by the Ciuilians are called Caduca.

(u) *Vid Sect.*130. *Glanvil. lib.*7. *cap.*17. *Bract. lib.*3. *fol.*118. *Fleta. lib.*5. *cap.*5. *& lib* 3. *cap.*10. *Britton. ca.*37. *& cap.*119. *F.N.B.*100. *Tr.*19.*es in barre Rot.*25.

(w) *Fleta lib.*6. *cap.*1. *Ockam. cap. quod non abſtinuit. &c.*

(x) *Pl.Com. Dame Hales caſe.*

(y) The father is ſeiſed of Lands in fee holden of I.S. the ſonne is attainted of high treaſon, the father dieth the Land ſhall eſcheat to I.S. propter defectum ſanguinis, for that the father dieth without heire, And the King cannot haue the Land becauſe the ſonne neuer had any thing to forfeit. But the King ſhall haue the eſcheate of all the Lands whereof the perſon attainted of high treaſon was ſeiſed, of whomſoeuer they were holden.

(y) *Pl.Com. in Nicholls caſe.*

(z) In an Appeale of Death or other Felonie, &c. proceſſe is awarded againſt the defendant, and hanging the proceſſe the defendant conueyeth away the Land, and after is outlawed, the Conueyance is good and ſhall defeat the Lord of his eſcheate, but if a man be indited of Felonie, and hanging the proceſſe againſt him, hee conueyeth away the Land, and after is outlawed, the Conueyance ſhall not in that caſe preuent the Lord of his eſcheate. And the reaſon of this diuerſitie is manifeſt: For in the caſe of the Appeale, the writ containeth no time when

(z) 38.E.3.fo.37.30.H 6.5. *Bract. l.*3. *title de Forf. Stanf. Pl.Cor.*192. *and according to this diuerſitie was it reſolued in* 5.E.6. *as it appeareth by my Lord Diers Manuſcript.*

the Felonie was done, and therefore the eſcheate can relate but to the outlawrie pronounced. But the inditement containeth the time when the felonie was committed, and therefore the eſcheate vpon the outlawrie ſhall relate to that time. Which Caſes I haue added, to the end the ſtudent may conceiue, that the obſeruation of writs, Inditements, Proceſſe, Iudgements, and other Entries, doth conduce much to the vnderſtanding of the right reaſon of the Law.

(a) Mir. c.a. 1. § 5. 51. H. 3 ſtatutum de Scac. Britt. f. 33. 34. Fleta. lib. 1. cap. 36. & lib. 2. ca 34. 35. Regiſt. 301. his Oath 18. E. 1. Ro. Parl. Tom. 21. E 1. Rot. 1. 29. E. 1. ſtat. de Eſcheatoribus, 14. E. 3. ca. 8. 28. E. 1. ca. 18 F. N. B. 100. e. Stanf. Prer. 81. 1. H. 8. ca. 8. 3. H. 8. ca 2. Capitula Eſchaetria in Vet. magna carta. fo. 160. 161. &c

Of this word (eſchaeta) here vſed by our Author, commeth (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to looke to Eſcheats, wardſhips, and other Caſualties belonging to the Crowne. In ancient time there were but two Eſcheators in England, the one on this ſide of Trent, and the other beyond Trent, at which time they had Subeſchaetors. But in the raigne of Edward the ſecond, the Offices were diuided, and ſeuerall Eſchaetors made in euerie Countie for life, &c. and ſo continued vntill the raigne of Edward 3. And afterwards by the ſtatute of 14. E. 3. it is enacted by Authoritie of Parliament, that there ſhould bee as many Eſcheators aſſigned, as when King Edward 3. came to the Crowne, and that was one in euerie Countie, & that no Eſcheator ſhould tarry in his office aboue a yeere, and by another Statute to be in office but once in three yeers, the Lord Treaſurer nameth him.

And hereof alſo commeth eſchaetria, which ſignifieth the Eſcheatorſhip or the office of the Eſcheater. But now let vs heare what our Author will further ſay vnto vs.

¶ Et ſic vide, &c. **This kind of ſpeech is often vſed by our** Author, and doth euer import matter of excellent obſeruation, which you may find in the Sections noted in the margent *.

* Sect. 147. 149. 248. 281. 417. 467. &c.

And it is to be well obſerued, that our Author ſaith, Sil nad aſcun heire, &c. la terre eſchaetera. In which words is implied a diuerſitie (as to the Eſcheate) betweene fee ſimple abſolute, which a naturall bodie hath, and fee ſimple abſolute with a bodie politique, or incorporate hath. (b) For if land holden of I. S. be giuen to an Abbot and his ſucceſſors: In this caſe if the Abbot and all the Conuent die ſo that the bodie politique is diſſolued, the Donor ſhall haue againe this land, & not the Lord by eſcheat. And ſo if land be giuen in fee ſimple to a Deane and Chapter, or to a Maior and Cominaltie, and to their ſucceſſors, and after ſuch bodie politique or incorporate is diſſolued, the Donor ſhall haue againe the land, and not the Lord by Eſcheate. And the reaſon, and cauſe of this diuerſitie is for that in the caſe of a body politique or incorporate the fee ſimple is veſted in their politique or incorporate capacitie created by the policie of man, and therefore the Law doth annex a condition in Law to euery ſuch gift and grant That if ſuch body politique or incorporate be diſſolued, that the Donor or grantor ſhall re-enter, for that the cauſe of the gift or grant faile, but no ſuch condition is annexed to the eſtate in fee ſimple veſted in any man in his naturall capacitie, but in caſe where the Donor or Feoffor reſerue to him a tenure, and then the Law doth imply a Condition in Law by way of eſcheate. Alſo (as hath beene ſaid) no writt of eſcheate lyeth but in the three caſes aforeſaid, and not where a body politique or incorporate is diſſolued.

(b) 7. E. 4. 11. 12. Fitz. N. B. 33. 9. E. 3. 26. 17. E. 2. ſtatut. de templariis.

Section 5.

¶ NOw commeth our Author to the diſcent betweene brethren, which hee purpoſely omitted before. ¶ Diſcent diſcenſus commeth of the Latyn word diſcendo, and, in the legall ſence, it ſignifieth when lands doe by right of blood fall vnto any after the death of his Anceſtors: or a diſcent is a meanes whereby one doth deriue him title to certaine lands, as heire to ſome of his Anceſtors. And of this, and of that which hath beene ſpoken doth ariſe another diuiſion of eſtates in fee ſimple, viz. euery man that hath a lawfull eſtate in fee ſimple, hath it either by diſcent, or by purchaſe.

¶ Item ſi ſoint trois freres, & le mulnes frere purchaſe terres en fee ſimple & deuie ſauns iſſue leigne frere auera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoint trois freres & le puiſne purchaſe terres en fee ſimple & deuie ſans iſſue, leigne frere auera la terre per diſcent & nemy

ALſo if there bee three brethren, and the middle brother purchaſeth lands in fee ſimple, and die without iſſue, the elder brother ſhall haue the land by diſcent, and not the younger, &c. And alſo if there be three brethren, and the youngeſt purchaſe lands in fee ſimple, and die without iſſue, the eldeſt brother ſhall nemy

nemy le mulnes, pur ceo que leigne & pluis digne de ſanke.

haue the land by diſcent & not the middle, for that the eldeſt is moſt worthy of blood.

¶ *Leigne eſt pluis digne de ſanke.* It is a maxime in Law, that the next of the worthieſt blood ſhall euer inherite, as the male and all diſcendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. becauſe the female of the part of the father is of the worthieſt blood. (c) And therefore among the males the eldeſt brother and his poſterity ſhall inherite lands in fee ſimple as heire before any younger brother, or any diſcending from him, becauſe as Littleton ſaith he is pluis digne de ſanke. Quod prius eſt dignius eſt, and qui prior eſt tempore potior eſt iure. Si quis plures filios habuerit jus proprietatis primo diſcendit ad primogenitum, eo quòd inuentus eſt primo in rerum natura. In King Alfreds time Knights fees deſcended to the eldeſt ſonne, for that by diuiſion of them betweene males the defence of the Realme might be weakened, but in thoſe dayes Socage fee was deuided betweene the heires males, and therewith agreeth Glanuill * Cum quis hæreditatem habens moriatur, &c. ſi plures reliquerit filios, tunc diſtinguitur vtrum ille fuerit miles, ſiue per feodum militare tenens, aut liber Sockmannus quia ſi miles fuerit aut per militiam tenens tunc ſecundum jus regni Angliæ primogenitus filius patri ſuccedit in toto, &c. ſi verò fuerit liber Sockmanus, tunc quidem diuidetur hæreditas inter omnes filios, &c. But hereof more ſhall be ſaid hereafter in his proper place.

(c) *Britton cap.* 119. *Bract. lib.* 2. *cap.* 30. 277. 279. 3. *E.* 3. 26. 3. *Eliz. Dier* 138. *Stanford prer.* 52. 58. 3. *E.* 1. *tit. auowry.* 235. 32. *E.* 3. *diſcent.* 80. *Bract. lib.* 4. 211. *Fleta. lib.* 6. *ca.* 2. *Glanuill, lib.* 7. *ca.* 1. *Mirror cap.* 1. §. 3. * *Glanuill lib.* 7. *ca.* 3. *& ca.* 1. *Vid. Pl. com* 229 *b.*

Section 6.

¶ Item eſt aſcauoir, que nul auera terre de fee ſimple per diſcent come heire a aſcun home, ſi non que il ſoit ſon heire dentire ſanke. Car ſi home ad iſſue deux fits per diuers venters & leigne purchaſe terres en fee ſimple & mozuſt ſans iſſue, le puiſne frere naucra la terre, mes luncle leigne frere, ou auter ſon procheine coſin ceo auera, pur ceo que le puiſne frere eſt de demy ſanke al eigne frere.

ALſo it is to bee vnderſtood, that none ſhall haue land of fee ſimple by diſcent as heire to any man, vnleſſe he be his heire of the whole blood, for if a man hath iſſue two ſonnes by diuers venters, and the elder purchaſe lands in fee ſimple, and die without iſſue, the younger brother ſhall not haue the land but the Vncle of the elder brother, or ſome other his next coſin ſhall haue the ſame, becauſe the younger brother is but of halfe blood to the elder.

¶ NO man can bee heire to a fee ſimple by the Common Law, (d) but he that hath ſanguinem duplicatum the whole blood, that is both of the father and of the mother, ſo as the halfe blood is no blood inheritable by diſcent becauſe that he that is but of the halfe blood cannot be a compleat heire, for that hee hath not the whole and compleate blood, and the Law in diſcents in fee ſimple doth reſpect that which is compleat and perfect. And this maxime doth not only hold where lands (whereof Littleton here ſpeaketh) are claymed or demanded as heire (e) but alſo in caſe of appeale of death; for, if one brother bee ſlaine, the other brother of the halfe blood ſhall neuer haue an appeale (albeit hee ſhall recouer nothing therein either in the realty or perſonalty) becauſe in the eye of the Law hee is not heire to him. Alſo this rule extends to a warrantie as our Author himſelfe elſewhere holdeth.

(d) *Bract. lib* 4. 279. *b. idem lib.* 2. *fo.* 65. *Britton. ca.* 119. *Fleta. lib.* 6. *ca.* 1. 1. *E.* 3. 19. *Iohn Gifford caſe.* 31. *E.* 3. *Contempl. de Voucher* 88. 40. *Aſſ.* 6. 4. *E.* 2 *Formed.* 49. *Vid. Ratcliffs caſe lib* 3. *fo.* 40. 41.

(e) 7. *E.* 4. 15. *Sect.* 737.

Section 7.

¶ ET ſi home ad iſſue fits & file

AND if a man hath iſſue a ſonne and a

¶ This is put for an example to illuſtrate that which hath beene

bene ſ ſaid nedeth no explanation. And herewith agreeth Britton.

Britton.ca.119.

per vn venter, ⁊ fits p anter venter, ⁊ le fits del primer venter purchaſe terres en fee, ⁊ mor ſans iſſue, la ſoer auera la terre p diſcent, come heire a ſa frere ⁊ nēy le puiſne frere, pur ceo que la ſoer eſt de le entire ſanke a ſon eigne frere.

daughter by one venter,& a ſon by another vēter,& the ſon of the firſt venter purchaſe lands in fee and die without iſſue,the ſiſter ſhall haue the land by diſcent as heire to her brother, and not the younger brother, for that the ſiſter is the whole blood of her elder brother.

Sect. 8.

¶ *Seiſie de terres en fee ſimple.* Theſe words exclude a ſeiſin in fee taile, albeit he hath a fee ſimple expectant. (f) And therefore if lands bee giuen to a man and his wife, and to the heires of their two bodies,the remainder to the heires of the husband, and they haue iſſue a ſonne, and the wife dieth, and hee taketh another wife, and hath iſſue a ſonne, the father dieth, the eldeſt ſonne entreth, and dieth without iſſue, the ſecond brother of the halfe blood ſhall inherite becauſe the eldeſt ſonne by his entrie was not actually ſeiſed of the fee ſimple being expectant but only of the eſtate taile. And the rule is that poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem, and here the eldeſt ſonne is not poſſeſſed of the fee ſimple but of the eſtate taile. And where Littleton ſpeaketh only of lands, (g) yet there ſhall be poſſeſſio fratris of an vſe, of a Seigniory, a rent, an aduowſon and of other hereditaments.

(f) 24.E.3.24.30. 31 E.3.Count de Vouch.88. 32.E.3.tit.Voucher. 37.Aſſ.p.4. 40.E.3.9 42.E.3.10. 39.E.3. 7.H.5.3.

(g) 5.E.4.fo.7. Pl.Com fo.58. in Wimbiſhes caſe.

¶ *Et leigne fits enter.* (h) Theſe words are materially added when the father die ſeiſed of lands in fee ſimple, for if the eldeſt ſonne doth not in that caſe enter, then without queſtion the youngeſt

(h) 10.Aſſ.27.34.Aſſ.10. 31.E.3.Count de Vouchet.88. 32.E.3.tit.Vouch.

¶ Et auxi ou hōe eſt ſeiſie de terres en fee ſimple, ⁊ ad iſſue fits ⁊ file per vn venter, ⁊ fits per auter venter, ⁊ mor, ⁊ leigne fits enter, ⁊ mor ſans iſſue, la file auera les tenements, ⁊ nēy le puiſne fits, vncore le puiſne fits eſt heire a le pere, mes nemy a ſon frere, mes ſi leigne fits ne entra en la frē apres la mort ſon pere, mes mor deuant aſcun entrie fait per luy, donqs le puiſne frere poit enter, ⁊ auera le terre come heire a ſon pere. Mes lou leigne fits en le caſe auandit entra apres la mort ſon pere, ⁊ ad ent poſſeſſion, donqs la ſoer auera la terre

And alſo where a man is ſeiſed of lands in fee ſimple,and hath iſſue a ſonne, and daughter by one venter, and a ſon by another venter, and die, and the eldeſt ſon enter,and die without iſſue, the daughter ſhall haue the land, and not the younger ſonne,yet the yonger ſon is heire to the father but not to his brother, but if the elder ſon doth not enter into the land after the death of his father but die before any entrie made by him,then the younger brother may enter, & ſhal haue the land as heire to his father but where the elder ſon in the caſe aforeſaid enters after the death of his father, and hath poſſeſſion,

Quia

Quia possessio fratris de feodo simplici facit sororem esse hæredem. **Mes si sont deux freres per diuers venters, & leigñ est seisie de terre en fee, & moꝝ sans issue, & son vncle entra come prochein heire a luy quel auxi moꝝ sans issue, ore le puisne frere puit auer la terre come heire al vncle, pur ceo que il est de lentier sanke a luy, coment que il soit de demy sanke a son eigne frere.**

there the sister shall haue the land, Because *Possessio fratris de feodo simplici facit sororem esse haredē.* But if there bee two brothers by diuers venters, & the elder is seised of land in fee, and die without issue, and his vncle enter as next heire to him, who also die without issue, now the younger brother may haue the land as heire to the vncle, for that he is of the whole blood to him, albeit he be but of the halfe blood to his elder brother.

sonne shall be heire, because as it hath beene said before regularly he must make himselfe heire to him that was last actually seised (as to the purchasor) and that was to the father where the eldest sonne did not enter. And therefore Littleton addeth that the sonne is heire to the father. (i) But when the eldest sonne in this case doth enter, then cannot the youngest sonne being of the halfe blood bee heire to the eldest, but the land shall discend to the sister of the whole blood. Yet in many cases albeit the sonne doth not enter into lands discended in fee simple the sister of the whole blood shall inherite, and in some cases where the eldest sonne doth enter, yet the younger brother of the halfe blood shall bee heire.

(i) 11.H.4.11. 40.E.3.39. 45.E.3.13. 40.Ass.p.6. Ratcliffes case.lib.3.fo.41.

(k) If the father maketh a Lease for yeares, and the Lesse entreth & dieth, the eldest sonne dieth during the tearme

(k) 5.E.4.7.b. 3.H.7.5. 8.Ass.p.6. 45.E.3.tit Releases.28.

before entrie or receipt of rent, the younger sonne of the halfe blood shall not inherite but the sister, because the possession of the lessee for yeares is the possession of the eldest sonne, so as hee is actually seised of the fee simple, and consequently the sister of the whole blood is to be heire. The same Law it is, if the lands be holden by Knights seruice, and the eldest sonne is within age, and the Gardian entreth into the lands. And so it is if the gardian in Socage enter.

But in the case aforesaid, if the father make a Lease for life or a gift in taile, and dieth, and the eldest sonne dieth in the life of tenant for life or tenant in taile, the younger brother of the halfe blood shall inherite because the tenant for life or tenant in taile is seised of the freehold, and the eldest sonne had nothing but a reuersion expectant vpon that freehold or estate taile, and therefore the youngest sonne shall inherite the land as haire to his father, who was last seised of the actuall freehold. And albeit a rent had beene reserued vpon the Lease for life, and the eldest sonne had receiued the rent and died, yet it is holden by some * that the younger brother shall inherite because the seisin of the rent is no actuall seisin of the freehold of the land. But 35.Ass.pl.2. seemeth to the contrary, because the rent issueth out of the land and is in lieu thereof, wherein the only question is, whither such a seasin of the rent, be such an actuall seasin of the land in the eldest sonne as the sister may in a Writ of right make her selfe heire of this land to her brother. But it is cleere that (l) if there be bastard eigne, and mulier puisne, and the father maketh a Lease for life or a gift in tayle be reseruing a rent and die, and the bastard receiue the rent and die, this shall barre the mulier, for the reason of that standeth vpon another maxime as shall manifestly appeare in his apt place, Sect.399.

* 7.H.5.34.per Hall & Leydington.

35.Ass.p.2.

(l) 14.E.2.Bastards.26. Vid.Sect.399.

¶ *Seisie des terres.* (m) **But in this case if the eldest sonne doth** enter and get an actuall possession of the fee simple, yet if the wife of the father be indowed of the third part and the eldest sonne dieth the younger brother shall haue the reuersion of this third part notwithstanding the elder brothers entrie, because that his actuall seisin which hee got thereby was by the endowment defeated. But if the eldest sonne had made a Lease for life, and the Lesse had endowed the wife of the father, and tenant in dower had died, the daughter should haue had the reuersion, because the reuersion was changed and altered by the Lease for life, and the reuersion is now expectant on a new estate for life.

(m) 7.H.5.2.3.4.

¶ *Enter.* **Hereupon the question groweth whither if the father** be seised of diuers seuerall parcels of lands in one Countie, and after the death of the father the sonne entreth into one parcell generally, and before any actuall entry into the other dieth, this generall entry into part shall vest in him an actuall seisin in the whole, so as the sister shall inherite the whole. And this is a quære in 21.H.7.33.a.

21.H.7.33.a.

And some doe take a diuersitie when an entrie shall vest, or deuest an estate, that there must be seuerall entries into the seuerall parcels, but where the possession is in no man, but the free-hold in law is in the heire that entreth, there the generall entrie into one part reduceth all into his actuall possession. And therefore if the Lord entreth into a parcell generally for a Mortmain, or the Feoffor for a condition broken, or the Disseisee into parcell generally, the entrie shall not vest nor deuest in these or like cases, but for that parcell. But when a man dies seised of diuers parcels in possession, and the freehold in law is by law cast vpon the heire, and the possession in no man, there the entrie into parcel generally seemeth to vest the actual possession in him in the whole. But if his entrie in that case be speciall, viz. that he enter only into that parcell and into no more, there it reduceth that parcell only into actuall possession.

¶ *Home seisie des terres.* **What then is the Law of a Rent,** Aduowson, or such things that lie in grant? (g) If a Rent, or an Aduowson doe discend to the eldest sonne, and hee dieth before hee hath seison of the Rent, or present to the Church, the Rent or Aduowson shall discend to the youngest sonne, for that he must make himselfe heire to his father, as hath beene oftentimes said before. The like Law is of Offices, Courts, Liberties, Franchises, Commons of inheritance, and such like. (h) And this case differeth from the case of the tenant by the courtesie, for there if the wife dieth before the rent day, or that the Church become void, because there was no laches or default in him, nor possibilitie to get seison, the law in respect of the issue begotten by him will giue him an estate by the courtesie of England. But the case of the discent to the youngest sonne standeth vpon another reason, viz. to make himselfe heire to him that was last actually seised as hath beene said.

(g) 19.E.2.quare imped.177. 3.H.7.5.

(h) 7.E.3.66.tit.barre.293. 3.H.7.5.

¶ *En fee simple.* (i) **For halfe bloud is not respected in estates** in tatie, because that the issues doe claime in by discent, per formam Doni, and the issue in taile is euer of the whole bloud to the Donee.

(i) 8.E.3.11.49.E.3.12. Ratcliffes case lib.3. fol.41.

¶ (k) *Possessio fratris de feodo simplici facit sororem esse hæredem.* Hereupon foure things are to be obserued, euery word almost being operatiue, and materiall. First, That the brother must bee in actuall possession. For possessio est quasi pedis positio. Secondly, De feodo simplici, exclude estates in taile. Thirdly, Facit sororem esse hæredem. So as (l) Soror est hæres facta, and therefore some act must bee done to make her heire, and the younger sonne is hæres natus (m) if no act be done to the contrarie. And albeit the words be facit sororem esse hæredem, yet this doth extend to the issue of the sister, &c. who shall inherit before the younger brother. Fourthly, Of Dignities whereof no other possession can be had but such as discend as to bee a Duke, Marquesse, Earle, Vicont, or Baron) to a man and his heires, there can be no possession of the brother to make the sister to inherit, but the younger brother being heire as Littleton saith to the father, shall inherit the Dignitie inherent to the bloud, as heire to him that was first created noble.

(k) Bracton.lib.2.fol.65. & lib.4.fol.279. Britton.cap.119. Flet.lib.6.ca.1.24.E.3.30.

(l) Ratcliffes case lib.3.fo.42.

(m) Britton.ca.119.

And you shall vnderstand that concerning Discents, there is a law, parcell of the lawes of England, called Ius coronæ, and differreth, in many things, from the generall law concerning the subiect. As for example, The King in any suite for any thing that pertaine to the Crowne shall not shew in certaine his colinage as a subiect shall do, or as he himselfe shall do, for things touching his Duchie. (n) And in the case of the King, if he hath issue a sonne and a daughter by one venter, and a sonne by another venter, and purchaseth lands and dieth, and the eldest sonne enter and dieth without issue, the daughter shall not inherit these lands, nor any other fee simple lands of the Crowne, but the yonger brother shall haue them. Wherein note that neither possessio fratris doth hold of lands of the possessions of the Crowne, nor halfe bloud is no impediment to the discent of the lands of the Crowne, as it fell out in experience after the decease of King Edward the first to the Queene Marie, and from Queene Marie, to Queene Elizabeth, both which were of the halfe bloud, and yet inherited not only the lands which King Edward or Queene Marie purchased, but the ancient lands parcell of the Crowne also.

6.H.4.1.

(n) 34.H.6.fo.34. Pl.Com.fo.245. 33.E.3.ca.de natiu vltra mare.

A man that is King by discent of the part of his mother, purchase lands to him and his heires and die without issue, this land shall discend to the heire of the part of the mother, but in the case of a subiect, the heire of the part of the father shall haue them.

Pl.Com.vbi supra.

So King Henrie the eight purchased lands to him and his heires, and died hauing issue two daughters, the Ladie Marie, and the Ladie Elizabeth after the decease of King Edward, the eldest daughter Queene Marie did inherit only, all his lands in fee simple. For the eldest daughter, or sister of a King shall inherit all his fee simple lands. So it is if the King purchaseth lands of the custome of Gauelkind, and die hauing issue diuers sonnes, the eldest sonne shall only inherit these lands. And the reason of all these cases is, for that the qualitie of the person doth in these and many other like cases alter the discent, so as all the lands, and possessions whereof the King is seised in iure Coronæ, shall secundum ius Coronæ, attend vpon and follow the Crowne, and therefore to whomsoeuer the Crowne discend, those lands and possessions discend also for the Crowne and the lands, whereof the King is seised in iure Coronæ, are con-

Pl.Com.fol.247.

concomitantia. If the right heire of the Cestuy be attainted of Treason, yet shall the Cestuy discend to him, and eo instante (without any other reuersall) the attainder is vtterly auoided, as it fell out in the case of Henrie the seuenth. (o) And if the King purchase lands to him and his heires, he is seised thereof in iure Coronæ, à fortiori, when he purchases land to him his heires and successors. *Pl.Com.238. 1.H.7.f.l.4.* (o) *43.E.3.fol.20.*

But herof this little taste shall suffice.

Section 9.

CEt est ascauoir que ī parol (enheritāce) nest pas tāt solement entendue, lou home ad frēs ou tenements per discent denheritage, mes auxi chescun fee simple, ou taile que home ad p̄ son purchase puit estre dit enheritance, pur ceo qne ses heyres luy purront enheriter. Car en briefe de Droit que home porra de terre que fuit de son purchase demesne, le brē dirra: Quam clamat esse ius & hæreditatem suam. Et illint terra dit en diuers autors briefs, q̄r hōe ou fēe porta ō s̄ purchase demesn, cōe apiert p̄ Regist.

AND it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by discent of inheritage, but also euery fee simple or taile which a man hath by his purchase may bee said an inheritance, because his heires may inherit him. For in a Writ of right which a man bringeth of land that was of his owne purchase, the Writ shall say, *Quam clamat esse ius & hæreditatem suam*. And so shall it be said in diuers other Writs which a man or woman bringeth of his owne purchase, as appeares by the Register.

CEt est ascauoire. This kinde of speech is vsed twice in this Chapter, and oftentimes by our Author in all his three Bookes, and euer teacheth by some rule of Law, or generall or sure leading point, as you shall perceiue by reading, and obseruing of the same, which for the ease of the studious Reader I haue obserued. *Sect.45.46.57.59.80.100. 146.164.170.184.229.243. 259.274.280.293.300.305. 419.420.421.489.632.697. 749.*

C *Quam clamat esse ius & hæreditatem suam.* (a) Here our Author declareth the right signification of this word (inheritance). And true it is that in the writ of right Patent, &c. quando dominus remittit Curiam suam. The words of the writ be, Quam clamat esse ius & hæreditatem suam. And in the Præcipe in capite, in a cui in vita, (b) when the Demandant claimeth by purchase, the writ is quam clamat esse ius & hæreditatem suam. And with Littleton agreeth the Register, fol.4. & 232. and the Booke in 49.E.3. 22. against sundaine opinions 7 H.4.5. 10.H.6.9. 39.H 6.38. Pl.com. Wimbishes case 47. And yet in 7.H.4.5. which is the Booke of the greatest weight Sir William Thirning Chiefe Iustice of the Common Bench (as it seemeth doubting of it) went into the Chancery to enquire of the Chancerie men the forme of the writ in that case, and they said that the forme was both the one way and the other, so as thereby the opinion of Littleton is confirmed. and the Booke in 6.E.3.fol.30. is notable, for there in an action of waste the Plaintife supposed, that the Defendant did hold de hæreditate sua, and it is ruled, that albeit the Plaintife purchased the reuersion, yet the writ should serue. And there it is said, It hath beene seene, that in a Cui in vita, the writ was, which the Demandant claymed as her right and inheritance, when it was her purchase. And so this point wherein there might seeme some contrarietie in Bookes is manifestly cleared. But in the Statuts of W.2.ca.5. de hæreditate vxorum by construction of the whole Statute is taken only for the wiues inheritance by discent, and not by purchase, as appeareth in 1.E.2. tit. Quare imped. 43.35.H.6.54. F.N.B.34.b. (a) *Sect.732. Bract.lib.2.fol.62.b. Fleta lib.6.ca.1.* *W.2.ca.5. 1.E.2.tit.quare imped.43. 35.H.6.54. F.N.B.34.b.*

There be some that haue an inheritance (c) and haue it neither by discent nor properly by purchase but by Creation, as when the King doth create any man a Duke, a Marquesse, Earle Viscount, or Baron to him and his heires, or to the heires males of his bodie, &c. he hath an inheritance therein by Creation. A man may haue an inheritance in title of Nobilitie and Dignitie three manner of wayes, that is to say, by Creation, by Discent, and by Pos- (c) *Lib.6.fol.52.53. Comites de Rutland case. lib.8.fol.16. 17. the Prince case.*

Prescription. By Creation two manner of ordinarie wayes (for I will not speake of a Creation by Parliament) by writ and by Letters Patents. Creation by writ is the ancienter way, and here it is to be obserued, that a man shall gaine an inheritance by writ. King Richard the second created Iohn Beauchampe de Holte Baron of Kedermister by his Letters Patents, bearing date the 10. of October, anno regni sui, 11. before whom there was neuer any Baron created by Letters Patents, but by writ. And it is to be obserued, that if he be generally called by writ to the Parliament, he hath a fee simple in the Baronie without any words of inheritance. But if he be created by Letters Patents, the state of inheritance must be limited by apt words, or else the grant is void. If a man bee called by writ to the Parliament, and the writ is deliuered vnto him, and he dieth before he commeth and sits in Parliament, whether hee was a Baron or no? And it is to bee answered that hee was no Baron, for the direction and deliuerie of the writ to him maketh not him Noble; for the better vnderstanding whereof it is to be knowne that the words of the writ in that case are, Rex, &c. E.B de D. Chiualier salutem. Quia de aduisamento & assensu concilij nostri pro quibusdam arduis & vrgentibus negotijs statum & defensionem regni nostri Angliæ, &c. concernēti quoddam Parliamentum nostrum apud Ciuitatem Westm. à 21. Octob. proxim. futuro teneri ordinauimus, & ibid. vobiscum & cum Prælatis, Magnatibus & Proceribus dicti regni nostri colloquium habere & tractatum; vobis in fide & ligeancia quibus nobis tenemini firmiter iniungendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus cessante excusatione quacunque, dictis die & loco personaliter interfitis nobiscum & cum Prælatis, Magnatibus, & Proceribus supradictis, super dictis negotijs tractaturis vestrumque concilium impensuris, &c. And this writ hath no operation or effect vntill he sit in Parliament, and thereby his bloud is ennobled to him and his heires lineall, and thereupon a Baron is called a Peere of Parliament. (d) And if issue be ioyned in any action, whether hee be a Baron, &c. or no, it shall not be tried by Iurie, but by the Record of Parliament, which could not appeare vnlesse he were of the Parliament. Therefore a Duke, Earle, &c. of another Kingdome, are not to be sued by those names here, for that they are not Peeres of our Parliament. And albeit the Creation by writ is the ancienter, yet the Creation by Letters Patents is the surer, for he may be sufficiently created by Letters Patents, and made Noble, albeit he neuer sit in Parliament.

Lib. 6. fol. 52 53. Countesse of Rutland's case.
8. H. 6. 10. 48. E. 3. 30.
35. H. 6. 46. Pl. Com. 223.
(d) 35. H. 6. 46.
48. E. 3. 30. b.
48. Ass. p. 6. 22. Ass. p. 25.
Regist. 287.
11. E. 3. breue. 472. 20 E. 4. 6.

(e) And it is to be obserued that Nobilitie may be granted for tearme of life, by act in law without any actuall Creation; as if a Duke take a wife by the intermarriage she is a Duches in Law, and so of a Marquesse, an Earle, and the rest, and in some other case. And there is a diuersitie betweene a woman that is Noble by Discent, and a woman that is Noble by marriage. (f) For if a woman that is Noble by Discent, marrie one that is vnder the degree of Nobilitie, yet she remayneth Noble still, but if shee gaine it by marriage, she loseth it, if she marrie vnder the degree of Nobilitie, and so is the rule to be vnderstood, Si mulier nobilis nupserit ignobili desinit esse nobilis. (g) But if a Duchesse by marriage marrieth a Baron of the Realme she remayneth a Duchesse and loseth not her name because her husband is Noble, & sic de cæteris.

(e) Lib. 6. f. l. 52. 53. Countes de Rutlands case.
2. H. 6. 11. 22. Ass. 24.
12. E. 3. breue 254. 8. H. 4. 19
11. H. 4. 15.
V. Fleta lib. 6. ca. 10.
(f) Lib. 4. fo. 118. Altons case
Tempore Maria Regina.
Brooke in fine de dignitie 69.
14. H. 6. 18. 2. H. 6. 11.
(g) 22 H. 6. 52.

And as an estate for life may be gained by marriage, so may the King create either man or woman Noble for life (h) but not for yeeres, because then it might goe to Executors or Administrators. The true diuision of persons is, that euery man is either of Nobilitie that is, a Lord of Parliament of the vpper House, or the degree of Nobilitie, amongst the Commons, as Knights, Esquires, Citizens and Burgesses of the lower House of Parliament, commonly called the House of Commons, and hee that is not of the Nobilitie is by intendement of Law among the Commons.

(h) Lib. 9. fol. 97. 98. S. r George Reynells case.

¶ *Come appiert per le Register.* Which booke in the Statute of W. 2. cap. 24 is called Registrum de Cancellaria, because it containeth the formes of writs at the Common Law that issue out of the Chancerie, tanquam ex officina Iustitiæ. There is a Register of originall writs, and a Register of Iudiciall writs, but when it is spoken generally of the Register it is meant of the Register originall. For the antiquitie and excellencie of this Booke. See in my preface to the eight part of my Commentaries. This excellent Booke our Author voucheth diuers times in these Bookes, and so doth hee diuers other Authorities in law of seuerall kinds, but with this obseruation, that he citeth no Authorities, but when the Case is rare or may seeme doubtfull, which appeareth in this, that hee putteth no Case in all his three Bookes but hath warrant of good Authorities in Law. For hee knew well the rule that perspicua vera non sunt probanda. And the like obseruation is made of Iustice Fitzherbert in his Booke of Natura Breuium, that he neuer citeth Authorities, but when the Case is rare or was doubtfull to him. The Authorities which our Author hath cited in his three Bookes I haue collected.

Vide Sect. 88. 94. 96. 101. 157. 234. 318. 383. 412. 420. 433. 514. 643. 644. 657. 660. 692. 702. 729.

Sect. 10.

Section 10.

¶ ET de tiels choſes de q̃ux hõe poit auer vn manuel occupation poſſeſſiõ ou reſceit, ſicõe des terres, teneñts, rents, & huiuſmodi, la home dirr̃ en coũt countant, & en plee pledant, que vn tiel fuit ſeiſie en ſon demeſne come de fee. Mes de tiels choſes que ne giſont en tiel Manuel occupation, &c. ſicome de aduowſon deſgliſe, & huiuſmodi, la il dirra que il fuit ſeiſie come de fee, & nemy en ſon demeſne come de fee, & en Latin il eſt en iun cas, quod talis ſeiſitus fuit, &c. in dominico ſuo vt de feodo, & en iauter caſe, quod talis ſeiſiius fuit, &c. vt de feodo.

AND of ſuch things whereof a man may haue a Manuell occupation, poſſeſſion, or receipt, as of Lands, Tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant and Plea Pleadant that ſuch a one was ſeiſed in his demeſne as of fee, but of ſuch things which doe not lie in ſuch Manuell Occupation, &c. as of an Aduowſon of a Church and ſuch like, there he ſhall ſay, that hee was ſeized as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis, ſeiſitus fuit in dominico ſuo vt de feodo*, and in the other Caſe, *Quod talis ſeiſitus fuit, &c. vt de feodo.*

¶ IN Count Countant. Coũt. i. narratio cõmeth of the French word Conte which in Latine is Narratio, & is vulgarly called a Declaration. The originall writ is according to his name Breue, briefe and ſhort, but the Count which the Plaintife or Demandant make is more narratiue and ſpacious and certaine both in matter and in circumſtance of time & place, to the end the Defendant may bee compelled to make a more direct anſwere; ſo as the writ may be compared to Logique, and the Count to Rhetorique, and it is that, which the Ciuilians call a Libell. And in that ancient Booke of the Mirror of Iuſtices, lib. 2. ca. des Loiers, Contors are Seriants ſkilfull in law ſo named of the Count as of the principall part, and in W. 2. ca. 29. he is called Seriant counter.

Mirror. des Iuſtices.

W. 2. cap. 29.

¶ *En plea pleadant.* Placitum. Here Littleton teacheth good pleading in this point, of which in his third Booke and Chapter of Confirmations, Sect. 534. he thus ſaith, *Et ſaches mon fits que eſt vn des pluis honorables, laudables, & profitable choſes en noſtre ley, de auer le ſcience de bien pleader en actions reals & perſonels, & pur ceo, ieo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender.* And for this cauſe this word Placitum is deriued a placendo, quia bene placitare ſuper omnia placet, and is not, as ſome haue ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; *Seiſus*, commeth of the French word *ſeiſin*. i. poſſeſſio, ſauing that in the Common Law ſeiſed, or ſeiſin is properly applied to freehold, and poſſeſſed or poſſeſſion properly to goods and chattels; although ſometime the one is vſed in ſtead of the other.

Bract. lib. 4. fol. 263.
Idem lib. 5. fol. 372
Britton. fol. 205 206.
Fleta lib. 5. ca. 5.
Stanf. prer. 8.
Pl. Com. fol. 191.
Wroteſleyes caſe.

¶ *En ſon demeſne come de fee*, in Dominico ſuo vt in feodo. Dominicum is not only that inheritance, wherein a man hath proper dominion or owner-ſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſeruice, but that which is manually occupied, manured, and poſſeſſed, for the neceſſarie ſuſtentation, maintenance and ſupportation of the Lord and his houſhold, and ſauoureth de domo, of the houſe, either ad menſam, for his or their bord and ſuſtentation, or manually receiued (as Rents) for bearing and defraying of neceſſarie charges publike or priuate. Of theſe (ſaith our Author) he ſhould plead, that he is ſeiſed in dominico ſuo vt de feodo. i. de feodo dominicali, ſeu terra Dominicali, ſeu redditu Dominicali, which is as much to ſay as Demeyne or Demaine, of the hand, i. manured by the hand, or receiued by the hand, and therefore he calleth it manuall occupation, poſſeſſion, or receipt. And in Domeſday demeane land is called Inland, as for example, 4. bouatas terræ de Inland, & 10. bouatas in ſeruitio.

Domeſday.

¶ *En tiel manuel occupation, &c.* There is nothing in our Author

but is worthy of obseruation. Here is the first (&c.) and there is no (&c.) in all his three Bookes (there being as you shall perceiue very many) but it is for two purposes. First, it doth imply some other necessary matter. Secondly, that the student may together with that which our Author hath said inquire what authorities there be in Law that treate of that matter, which will worke three notable effects; First, it will make him vnderstand our Author the better; Secondly, it will exceedingly adde to the readers inuention. And lastly, it will fasten the matter the more surely in his memory, for which purpose I haue for his ease in the beginning set downe in these Institutes the effect of some of the principall Authorities in Law as I conceiue them concerning the same. In this place the (&c.) implyeth possession or receipt, and such other matter as appeareth by my notes in this Section. As for the Authorities of Law, you shall finde the effect of them in this Section, and the like of the rest of the (&c.) which you shal finde in the Sections hereafter mentioned, omitting those (for auoyding of tediousnesse) that either are apparant, or which are explaned in some other places, viz. Sect. 20. 48. 102. 108. 120. 125. 136. 137. 146, 149, 154. 164. 166. 167. 168. 177. 179. 183. 184. 194. 200. 202. 210. 211. 217. 220. 226. 233. 240. 242. 244. 245. 248 262. 264. 269, 270. 271. 279. 320. 322. 323. 325. 326. 327. 329, 330. 335. 336. 341. 347. 348. 349 350. 352. 355. 356. 359. 364. 365. 374. 375. 377. 381. 384. 389. 393. 395, 397. 399. 401. 402. 410 417. 428. 433 447. 449. 464. 470. 471. 477. 483. 489. 500. 501. 522. 532. 552. 553. 556. 558. 562. 578. 591. 592. 593. 594. 603. 613. 624. 625. 630. 632. 634. 637. 638, 648. 659. 660. 661, 669. 687. 693. 700. 718. 745. 748. 749. All which I haue obserued and quoted here once for all for the ease of the studious reader.

Britton 205. 206. *optime.* *Fleta lib.* 6. *ca.* 5. *Idem lib.* 3, *ca.* 15.

¶ *Vt de feodo.* **Where** (vt) **is not by way of similitude, but to bee** vnderstood politiuely that he is seised in fee. And so it is where one plead a discent to one vt filio & hæredi that is to Io. S. that is sonne and heire, & sic de ceteris where (vt) denotat ipsam veritatem.

(i) 7. E. 3. 63. 24. E. 3. 74. 34. H. 6. 34. 19. E. 3. quar. imp. 154. *Mirror cap.* 2. § 17.

¶ *Sicome de aduowson.* **Of an Aduowson** (i) **wherein a man hath** as absolute ownership and propertie as he hath in lands or rents, yet he shall not pleade, that he is seised in Dominico suo vt feodo, because that inheritance, sauouring not de domo, cannot either serue for the sustentation of him and his household, nor any thing can bee receiued for the same for defraying of charges. And therefore he cannot say, that he is seised thereof in dominico suo de feodo, whereby it appeareth how the Common law doth detest Simony and all corrupt bargaines for presentations to any benefice, but that (k) idonea persona for the discharge of the cure should be presented freely without expectation of any thing; nay so cautious is the Common law in this point that the pl. in a quare impedit should recouer no damages for the losse of his presentation vntill the statute of W. 2. cap 5. And that is the reason that Gardian in Socage (l) shall not present to an Aduowson, because he can take nothing for it, and by consequent he cannot account for it. And by the law he can meddle with nothing that he cannot account for. (m) And in a writ of right of Aduowson, the patron shall not alledge the expiees or taking of the profits in himselfe but in his incumbent. And hereby the old bookes shall bee the better vnderstood, viz. Bracton, lib. 4. tract. 1. cap. nu. 5. Est autem dominicum quod quis habet ad mensam, & proprie sicut sunt Demeanes Anglice. And Fleta lib. 5. ca. 5. Est autem dominicum propriè terra ad mensam assignata. Dominicum etiam dicitur ad differentiam eius quod tenetur in seruitio. But of an Aduowson and such like he shall plead, that he is seised de aduocatione vt de feodo & jure.

(k) *Lib.* 6. *fo.* 51. *Boswel. case.*

(l) 8. E. 2. *Presentment al Eglise.* 10. 7. E. 3. 39. 27 E. 3. 89. 29. E. 3. 5. 31. E. 3. *Estopel* 240.

(m) 7. E. 3. 63. *Bracton.* 263. 372. *Fleta lib.* 5 *ca.* 5.

¶ *Aduowson.* Aduocatio, **signifying an aduowing or taking into** protection, is as much as jus patronatus. Sir William Herle in 7. E. 3. fo. 4. saith, that it is not long past, that a man did know what an Aduowson was, but when a man would grant an aduowson he granted Ecclesiam, the Church, and thereby the aduowson passed. Vid. 45. E. 3. 5. But surely the word is of greater antiquity, for in the Register there is an originall writ de recto Aduocationis, and in the originall writ of Assise de darreine presentment the patron is called Aduocatus. (n) Vid. W. 2. ca. 5. And so doth (o) Bracton call him. Aduocatus autem dici poterit ille ad quem pertinet jus aduocationis alicujus, vt ad Ecclesiam præsentet nomine proprio & non alieno. And (p) Fleta lib. 5 ca. 14. agreeth herewith almost totidem verbis: Aduocatus est ad quem pertinet jus aduocationis alterius Ecclesiæ, vt ad Ecclesiam nomine proprio non alieno possit præsentare; And (q) Britton cap. 92. The Patron is called Auow, And the patrons are called aduocati for that they be either Founders or mainteyners or benefactors of the Church either by building, dotation or increasing of it, in which respect they were also called Patroni, and the Aduowson jus patronatus.

F. 3. 4. 45. *E.* 3. 5.

(n) *W.* 2 *ca.* 5. (o) *Br. El lib.* 4. *fo.* 240. (p) *Fleta lib.* 5 *ca.* 14. (q) *Britton. ca.* 92. (r) 33. *H.* 6. 11 *b per Trisot* 14. *H.* 6. 15 *per Newton.* 31. *E.* 1 *dowt* 68. 69. *F. N. B.* 31. *b.* *Lib.* 10 135 136. *R. Smythes case.* 45. *E.* 3. *Fines* 41. 45. *E.* 3 12. 17. *E.* 3. 78. 17. *E.* 2. *Devon* 163.

And it is to be vnderstood that there is a great (r) diuersity inter aduocationem medietatis Ecclesiæ, &c. & medietatem aduocationis Ecclesiæ, and of their seuerall remedies for the same. For the Aduowson of the moity is when there be seuerall Patrons, and two seuerall incumbents in one Church, the one of the one moity thereof, and the other of the other moity, and one part

part aſwell of the Church as of the towne allotted to the one, and the other part thereof to the other, and in that caſe each Patron if he be diſturbed ſhall haue a quare impedit, quod permittat ipſum præſentare idoneam perſonam ad medietatem Eccleſiæ.

But if there be two Copercenors, and they doe agree to preſent by turne each of them in truth hath but a moity of the Church, but for that there is but one incumbent, if either of them be diſturbed ſhe ſhall haue a Quare impedit, &c. præſentare idoneam perſonam ad Eccleſiam; for that there is but one Church and one incumbent, and ſo of the like. But in (ſ) the ſaid caſe of two Copercners one of them ſhall haue a writ of right of Aduowſon de meditate aduocationis for in truth ſhe hath but a right to a moity, but in the other caſe where there be two Patrons and two incumbents in one Church each of them ſhall haue a writ of right of Aduowſon de aduocatione medietatis.

(ſ) *Brit'on.fo.*235. 31.*E.*1 *drei* 68.69. *F.N B.*31.*b.c.*33.*a.* 5.*H.*7.8. 17.*E* 3.38.75.76. 7.*E.*3 327. 8.*E.*3 425. 22.*Aſſ.p.*33. 14.*H.*4 10. 33.*E.*3.*quar.imp.*196.

And as there may (as hath beene ſaid) be two ſeuerall Parſons in one Church, ſo there may be two that may make but one Parſon in a Church. (t) Britton ſaith, Si aſcun Egliſe ſoit done a diuers perſons per vn ſole avowe nul ne ſe pura pleadre per aſſiſe de iuris vtrum ne nul eſtre implede ſauns lautre, &c. And therewith agreeth Fleta. (u) Item licet aliqua Eccleſia diuiſa fuerit inter duos, ſiue bona ſua habeant comunia ſiue ſeperata, dum tamen vnicum habeant advocatum nullus eorum ſine alio agere poterit vel implacitari. And Fitzh. ſaith, that two Prebendaries may be one Parſon of a Church, who ſhall ioyne in a Iuris vtrum, ſo as one Rectory may be annexed to two ſeuerall Prebends, and both of them make but one Parſon. But where one is Parſon of the one moity of a Church and another of the other moity as hath beene ſaid, there one of them ſhall haue a juris vtrum againſt the other, and in the writ ſhall name him perſona medietatis Eccleſiæ, &c. But for auoyding of ſuſpition of curioſitie if wee ſhould proceed any further herein, we will attend what Littleton will further teach vs.

(t) *Britton.fo.*235.

(u) *Fleta lib.*5.*ca.*19.

*F.N.B.*49. o.

*F.N.B.*49.*p.*

Section 11.

¶ ET nota que home ne poit auer pluis ample ou pluis greinder eſtate den-heritance, que fee ſimple.

ANd note that a man cannot haue a more large or greater eſtate of inheritance than Fee ſimple.

¶ This doth extend as well to fee ſimples conditional and qualified, as to fee ſimples pure and abſolute. For our Author ſpeaketh here of the ampleneſſe, and greatneſſe of the eſtate, and not of the perdurableneſſe of the ſame. And he that hath a fee ſimple conditionall or qualified hath as ample and great an eſtate as hee that hath a fee ſimple abſolute, ſo as the diuerſitie appeareth betweene the quantitie and qualitie of the eſtate.

From this ſtate in fee ſimple, eſtates in taile, and all other particular eſtates are derined, and therefore worthily our Author beginneth his firſt booke with Tenant in Fee ſimple for a principalioribus ſeu dignioribus eſt inchoandum.

¶ *Ne poet auer pluis ample ou greinder eſtate, &c.* For this cauſe two (a) fee ſimples abſolute cannot be of one, and the ſelfe-ſame land. If the King make a gift in taile and the Donee is attainted of treaſon, in this caſe the King hath not two ſimples in him, viz the ancient reuerſion in fee, and a fee ſimple determinable vpon the dying without iſſue of Tenant in taile, but both of them are conſolidated and conioyned together; and ſo it is if ſuch a Tenant in taile doth conuey the land to the King his heires and Succeſſors, the King hath but one eſtate in fee ſimple vnited in him, and the Kings grant of one eſtate is good, and ſo was it adiudged in the Court of Common pleas. And yet in ſeuerall Parſons by act in Law a reuerſion may be in fee ſimple in one, and a fee ſimple determinable in another by matter Ex poſt facto; as if a gift in taile be made to a Villeine, and the Lord enter, the Lord hath a fee ſimple qualified, and the Donor a reuerſion in fee, but if the Lord inteoffe the Donor, now both Fee ſimples are vnited, and he hath but one fee ſimple in him; but one fee ſimple cannot depend vpon another by the grant of the partie, as if lands be giuen to A. ſo long as B. hath heires of his body the remainder euer in fee, the remainder is voide.

(a) *Pl.Com* 349. & 248. 19.*H.*8.*Dier* 4. 29.*H.*8.*Dier* 33. 16.*Eliz.Dier.*330. 2.*Maria Dier.*107. *Auſtens caſe.* *Pa.*38.*Eliz.rot* 108. *In quar.imp. betweene the Queene Pl. and the Biſhop of Lincolne, Buſſey and others deff.* 15.*E.*4.6.8.

Sect. 12.

¶ ITem purchaſe eſt appel la poſſeſſion de terres ou

ALſo purchaſe is called the poſſeſſion of lands or

¶ Purchaſe in Latyn is either acquiſitum of the verbe acquiro, for ſo I finde it in the originall Regiſter 243. In terris vel tenementis

mentis quæ viri & mulieres coniunctim acquisierunt, &c. Bracton calleth it perquisitum; and by (b) Glanuil it is called questus or perquisitum.

tenements que home ad p son fait, ou per agreement, a quel possession il ne auient per title de discent de nul de ses auncesters, ou de ses cousins mes per son fait demesne.

tenements that a man hath by his deed or agreement, vnto which possession hee commeth not by title of descent from any of his ancestors, or of his Cousins but by his owne deed.

Bracton. lib 2 fo 4c.
(b) Glanuil. lib. 7. ca. 1.
Britton ca. 33. fo 84. & 121.

A purchase is alwayes intended by title, and most properly by some kinde of conueyance either for money or some other consideration, or freely of gift: for that is in Law also a purchase. But a discent, because it commeth meerely by act of Law, is not said to be a purchase; and accordingly the makers of the act of Parliament in 1.H.5.ca.5 speaketh of them that haue lands or tenements by purchase or discent of inheritance. And so it is of an escheate or the like because the inheritance is cast vpon, or a title vested in the Lord by act in Law and not by his owne deede or agreement as our Author here saith. Like Law of the state of Tenant by the courtesie tenant in dower or the like. But such as attaine to lands by meere iniury and wrong, as by disseisin, intrusion, abatement, vsurpation, &c. cannot be said to come in by purchase no more then Robberie, Burglary, Pyracy or the like can iustly be tearmed purchase.

Pl. Com. Wimbishes case, 47.b. 1.H.5.ca.5.

If a Noble man, Knight, Esquire, &c. be buried in a Church, and haue his coat armour and Pennions with his armes, and such other ensignes of honour as belong to his degree or order set vp in the Church, or if a graue stone or tombe bee laid or made, &c. for a monument of him. (c) In this case albeit the freehold of the Church be in the parson, and that these be annexed to the freehold, yet cannot the Parson or any take them or deface them, but he is subiect to an action to the heire, and his heires in the honor and memory of whose Auncestor they were set vp. And so it was holden, Mich. 10. Ia. and herewith agreeth the Lawes (d) in other Countries. Note this kinde of inheritance: and some hold that the wife or Executors that first set them vp may haue an action in that case against those that deface them in their time. And note that in some places chattels as heire-loomes, (as the best bed, table, pot, pan, cart, and other dead chattels moueable) may goe to the heire, and the heire in that case may haue an action for them at the Common-law, and shall not sue for them in the Ecclesiasticall Court, but the heireloome is due by custome and not by the Common law. And the (e) ancient iewels of the Crowne are heire loomes, and shall discend to the next successor, and are not deuisable by testament.

(c) 9.E.4.14.

Mich.10.Ia. Obiter in Com. banco in Tymes case.
(d) B. Cassaneus fo.13. Conel.29.
30.E.3.2.& 3.
39.E.3.6 9.10.
1.H.5.tit. Executors.108.
tit. Discent Tr.43.
9.E.4.15. Madam Wichers case.
(e) Vid.28.H.8.24.

An heire loome is called principalium or hereditarium.

Consuetudo hundredi de Stretford in Com' Oxon̄ est quod hæredes ten̄torum infra hundredum prædictum existen̄ post mortem antecessorum suorum habebunt, &c. principalium Anglice an heire Lombe, viz. De quodam genere catallor̄, vtensilium, &c. optimum plaustrum Optimam carucam, optimum ciphum, &c.

Ist. adiudicata coram Rege. Tr.41.E.3.lib.2 fo.104. in Thesaur.

Our Author hath not spoken of parceners in this Chapter for that he hath particular chapters of the same.

Sect.241.242. &c.

Chap. 2. Sect. 13.

¶ *Tenant en Fee Taile.* Tallium, or Feodum talliatum, is deriued of the French word tailler, scindere, for so Littleton himself in his Chapter Sect.18. saith.

Mirror. ca.2.§.15. & cap.1.§.5.

¶ *Le Statute de W.2.* This Statute was made in 13.E.1. and is called West.2. because the Parliament was holden at Westminster, and

Tenant in Fee tail̄ est p forc̄ de le statute de West.2. ca.1. **Car ouant l'dit statute, touts Enheritāces fuer fee simpl̄; car touts les dones q̄ cōt specifies deins**

Tenant in Fee Taile is by force of the Statute of *W.2.cap.1.* for before the said Statute, al Inheritances were Fee simple; for al the gifts which bee specified in yt stat. were fee simple

hath

in̄ statut, fuer fee simple cōditional al cōmon ley, cōe appiert p̄ rehersal ó in̄ statute. Et oze p̄ cel statut tenāt en t̄ taile est en deux mañs, cestascauoire, tenant en taile generall, & tenant en taile special.

cōditional at the common law, as appeareth by the rehearsall of the same Statute. And now by this Statute, Tenant in Taile is in two manners, that is to say, Tenant in taile generall, and Tenant in taile speciall.

hath the name of the second, because another Parliament was formerly holden at Westminster in the third yere of the same Kings raigne, which was called Westminster the first. And albeit manie Parliaments were after holden at Westminster besides these, yet were they two onely, propter excellentiam, called the Statutes of Westminster. And the Act intended by Littleton, is W.2.c.1. Upon which Statute, our Authour in the Inner Temple did learnedly read, whose reading I haue. Of King Ed.1. and of this Statute, Sir William Herle chiefe Iustice of the Court of Common Pleas, in 5.E.3.14. saith, That King E.1. was the wisest King that euer was: and the cause of the making of this Statute, was to preserue the Inheritance in the bloud of them to whom the gift was made. And in 9.E.3.22. he saith, That they were sage men that made this Statute. See more of this in the Chapter of warranties, Sect.746.

5.F.3.14.

9.E.3.22.

Of this estate Taile it is said, (a) Modus legem dat donationi, & tenend̄ est etiam conuentio, quia Modus & Conuentio vincunt legem: Vt si alicui eum vxore fiat donatio, habendum & tenendum sibi & hæredibus quos inter eos legitime procreabunt, ecce quod donator vult tales hæredes in hæreditate paterna & materna succedant, alijs hæredibus eorum remotioribus penitus exclusis: Et quod voluntas donatoris obseruari debet manifeste apparet per hæc Statuta, quia autem dudum Regi durum videbatur, &c.

(a) *Fleta lib.3.cap.9 Bract.lib.2.ca.5.&c. Brit.ca.24.& 36.*

¶ *Deuant le dit Statute* (b) *touts Inheritances fueront Fee simple.* Here Fee simple is taken in his large sence, including as well conditionall or qualified, as absolute, to distinguish them from estates in Taile since the said Statute. Before which Statute of Donis conditionalibus, If Land had beene giuen to a man, and to the heires males of his bodie, the hauing of an Issue female had beene no performance of the Condition; but if he had issue male, and died, and the issue male had inherited, yet hee had not had a fee simple absolute, (c) for if he had died without issue male, the Donor should haue entred as in his reuerter. By hauing of issue the Condition was performed for three purposes; First, to Alien: Secondly, to Forfeit: Thirdly, to charge with Rent, Common, or the like. But the course of discent was not altred by hauing issue; for if the Donee had issue and died, and the land had descended to his issue, (d) yet if that issue had died (without any alienation made) without issue, his colaterall heire should not haue inherited, because hee was not within the forme of the gift, viz. heire of the bodie of the donee. (f) Lands were giuen before the Statute in frankmarriage, and the donees had issue and died, and after, the issue died without issue, it was adiudged, that his colaterall issue shall not inherite, but the donor should re-enter. So note, that the heire in Taile had no fee simple absolute at the Common Law, though there were diuers discents.

(b) *Vid.Sect.18. Brit.ca.26.fol.93. Pl.Com.235.562.Shelleys Case.lib.1.fol.103.*

(c) *44.E.3.1. 30.E.1. Formedon 66. 7.E.3.6.7. 7.H.4.31. 12.H.4.2.*

(d) *18.E.3.46.18.Ass.p.5. 12.E.4.3.*

(f) *4.H.3.Formedon 34. 18.Ass.5. 12.E.4.3. Pl.Com.247.b. 18.E.2.tit. Formedon 58.59.*

If Lands had beene giuen to a man and to his heires males of his bodie, and hee had issue two Sonnes, and the eldest had issue a Daughter, the Daughter was not inheritable to the Fee simple, but the yonger sonne per formam Doni. And so if Land had beene giuen at the Common Law to a man and the heires Females of his bodie, and he had issue a Sonne and a Daughter, and died the Daughter should haue inherited this Fee simple at the Common Law, for the Statute of Donis Conditionalibus, createth no estate taile, but of such an estate as was fee simple at the Common Law & is discendible in such forme as it was at the Common Law. If the Donee in taile had issue before the Statute, & the issue had died without issue, the alienation of the Donee, at the Common Law, hauing no issue at that time had not barred the Donor.

(g) If Donee in taile at the Common Law had aliened before any issue had, and after had issue, this alienation had barred the issue, because he claimed a Fee simple, yet if that issue died without issue, the Donor might reenter for that he aliened before any issue, at what time he had no power to alien to barre the possibilitie of the Donor. (h) But if Feme tenant in taile had taken husband, and had issue, and the husband and wife had aliened in Fee by Deed before the Statute, yet the issue might haue had a Formdon in discender for the alienation was not lawfull: but otherwise it is, if it had beene by fine. And these things though they seeme ancient are necessarie, notwithstanding to be knowne, aswell for the knowledge of the Common Law, as for Annuities and such like Inheritances as cannot be intailed, within the said Statute, and therefore remayne at the Common Law. (i) If the King before the Statute of Donis con-

(g) *30.E.1. formdon 65. Temps E.1. ibidem.62. 19.E.2 formdon 61. Pl.Com.246.*

(h) *4.E.2. formdon 50.*

6.E.3 56.Ie. of Elsbams case.

conditionalibus had made a gift to a man, and to the heires of his bodie begotten, the Donee Post prolem suscitatam might haue alened aswell as in the case of a common person. (k) But if the Donee had no issue, and before the Statute had alened with warrantie, and died, and the warrantie had discended vpon the King, this should not haue bound the King of his Reuersion without assets: but otherwise it was in the case of a common person. (l) Of the other side, if Lands had beene giuen to the King and to the heires of his bodie, hee could not before issue haue alened in Fee, but only to haue barred his issue as a common person might haue done, but not to haue barred the reuersion, for that should haue beene a wrong in the case of a subiect, and the Kings Prerogatiue cannot alter his case, nor make it greater, then the Donor gaue vnto him: And it is a maxime in Law, That the King can doe no wroug when all Estates were Fee simple, then were Purchasers sure of their Purchases, Farmors of their Leases, Creditors of their Debts, the King and Lords had their Escheates, Forfeitures, wardships, and other profits of their Seignories; and for these and other like cases, by the wisdome of the Common Law all estates of inheritance were Fee simple; and what contentions and mischiefes haue crept into the quiet of the Law by these fettered inheritances, daily experience teacheth vs. But see more of this matter in the aforesaid Chapter of warrantie, Sect. 746.

(k) 45. Ass. p. 6.

(l) Pl. Com. 246. b.

Lib. 10. fol. 38. in Port. case.

¶ *Common ley.* See for explication hereof, Sect. 170.

Doct. & Stud. lib. 2. cap. 55.

¶ *Come appeirt per le reherſall de meſme leſtatute.* Here, by the authoritie of our Author, The rehearsall or preamble of a Statute is to be taken for truth; for it cannot be thought that a Statute that is made by authoritie of the whole Realme, aswell of the King as of the Lords Spirituall and Temporall, and of all the Commons will recite a thing against the truth.

¶ *Et ore per cel ſtatute tenant en taile eſt en 2. Manners, .S. tenant en tayle generall, & tenant en tayle eſpeciall.*

This diuision of an estate taile is perfect and sound, for the membra diuidentia, viz. generall and speciall are conuerted properly with the thing defined, and they are proued by many Authorities of Law, and approued of all learned men, and so are all the diuisions through all his three Bookes which the studious and diligent Reader will obserue. And how excellent and difficult a thing it is to diuide rightly and properly, especially in the Law the learned doe know.

By this Statute the land is as it were appropriated to the Tenant in taile, and to the heires of his bodie, and therefore (r) if an estate be made, either before or since the Statute of 27. H. 8. cap. 10. to a man and the heires of his bodie, either to the vse of another and his heires, or to the vse of himselfe and his heires, this limitation of vse is vtterly void. For before the said Statute of 27. H. 8. he could not haue executed the estate to the vse, and so was it adiudged (s) in an Eiectione firmæ betweene Iohn Cowper Plaintife, and Thomas Franklin &c. Defendant.

(r) 24. H. 8. tit. feoffments al vses 4. 27. H. 8 fo.

(s) Pasch. 14 Ia. in the Kings Bench.

Section 14. 15.

Vid. Sect. 1.

¶ TErres, Terra, in his generall and legall signification (as hath beene said before) includeth not only all kind of grounds, as medow, pasture, wood, &c. but houses and all edifices whatsoeuer. In a more restrained sence it is taken for arrable ground.

¶ *Tenements*, tenementa. This is the only word which the said Statute of W. 2. that created Estates taile vseth, and it includeth not only all Corporate Inheritances, which are or may be holden, but also all Inheritances issuing out of any of

¶ TEnāt en taile generall, eſt lou tres ou teneints ſont dones a vn hõe & a ſes heires de ſon corps engendres: En ceo caſe eſt dit generall taile, pur ceo q̃ quelcunqz feme q̃ tiel tenant eſpouſa (ſil auoit pluſors femes, & per chescun d eux il ad iſſue) vncore chescun de les iſſues

TEnant in taile generall, is where Lands or Tenements are giuen to a man, and to his heires of his bodie begotten. In this case it is said generall taile, because whatsoeuer woman that such tenant taketh to wife (if he hath many wiues and by euery of them hath issue) yet euerie one of these issues by

pos-

Adnati quaſi a latè congniti.

Gradus Parentelæ & Conſanguinitatis, pro meliori intelligentia Authoris noſtri.

The degrees of Parentage and of Conſanguinitie for the better vnderſtanding of our Authour.

Approued by
Bracton, lib.2. cap.31. fol. 67.
Britton, cap.89. fol.220.221.
Fleta, lib.5. cap.7.
Mirror cap.1. §.3. & que heritages.

Adgnati quaſi a patre agnati.

Adgnati ex parte Patris.
Couſins on the part of the Father the more worthy in Diſcents, though farther remote.

Cognati ex parte Matris.
Couſins on the part of the Mother the leſſe worthy in Diſcents, though neerer of kinne.

Cognati quaſi ſimul nati ex parte matris.

Linea tranſuerſalis ſeu collateralis.
The ſide Line.

Abpatruus magnus.
The great Vncles Grand-father on the Fathers ſide.

Abamita magna.
The great Vncles Grand-mother on the Fathers ſide.

Recta Linea.
The right Line.

Tritauus.
The great Grand-fathers great Grand-father.

Tritauia.
The great Grand-fathers great Grand-mother.

Linea tranſuerſalis ſeu collateralis.
The ſide Line.

Abauunculus magnus.
The great Vncles Grand-father on the Mothers ſide.

Abmatertera magna.
The great Vncles Grand-mother on the Mothers ſide.

5

Attauus.
The great Grand-fathers Grand-father.

Attauia.
The great Grand-fathers Grand-mother.

Propatruus magnus.
The great Vncles Father on the Fathers ſide.

Proamita magna.
The great Vncles Mother on the Fathers ſide.

4

Abauus.
The great Grand-fathers Father.

Abauia.
The great Grand-fathers Mother.

Proauunculus magnus.
The great Vncles Father on the Mothers ſide

Promatertera magna.
The great Vncles Mother on the Mothers ſide

Auus ab Auo quia patre antigmor.

Patruus magnus.
The great Vncle on the Fathers ſide.

Amita magna.
The great Aunt on the Fathers ſide.

3

Proauus.
The great Grand-father.

Proauia.
The great Grand-mother.

Auunculus magnus.
The great Vncle on the Mothers ſide.

Matertera magna.
The great Aunt on the Mothers ſide.

Patruus quaſi loco patris.

Patruus.
The Vncle or Fathers Brother.

Amita.
The Aunt or Fathers Siſter.

2

Auus.
The Grand-father.

Auia.
The Grand-mother.

Auunculus, quaſi Auus minor.

Auunculus.
The Vncle or Mothers Brother.

Matertera.
The Aunt or Mothers Siſter.

Matertera quaſi Mater altera.

1

Pater.
Father.

Mater.
Mother.

Linea recta aſcendens.
The right Line aſcending.

Frater quaſi ſere alter.

Patrueles à Patruo.
Sonnes or Daughters, Couſin Germans on the Fathers ſide.

Amitini ab Amita.
Sonnes or Daughters, Couſin Germans on the Fathers ſide.

Linea tranſuerſalis, ſeu collateralis.
The ſide Line.

Frater a Brother.
Semi germanus frater. Brother of one Father and ſeuerall Mothers. *Soror.* Siſter.

Frater, a Brother.
Vterinus frater. Brother of one Mother & ſeuerall Fathers. *Soror.* Siſter.

Linea tranſuerſalis, ſeu collateralis.
The ſide Line.

Auunculini ab Auunculo.
Sonnes or Daughters, Couſin Germans on the Mothers ſide.

Materterini à matertera.
Sonnes or Daughters, Couſin Germans on the Mothers ſide.

Soror quaſi ſorte vtraque nata.
Semi germanus frater quaſi ex eodem patre & ſeperalibus matribus natus.
Filius.
Filia
ab amore parentum.

Vterini quaſi nati ex eodem vtero fratres ex ſeperalibus patribus.

Horum.
Of theſe.
Filius.
The Sonne.
Filia
The Daughter right Couſin German.

Propo-

Linea recta
The right Line

ſitus.

diſcendens.
diſcending.

Horum.
Of theſe.
Filius.
The Sonne.
Filia.
The Daughter right Couſin German.

Filius.
Sonne.

Filia.
Daughter.

1

Eorum.
Of theſe.
Nepos collat.
The collaterall Nephew.
Neptis collat.
The collaterall Niece.

Nepos linealis.
The lineall Nephew.

Neptis linealis.
The lineall Niece.

2

Nepos quaſi natus poſt.

Eorum.
Of theſe.
Nepos collat.
The collaterall Nephew.
Neptis collat.
The collaterall Niece.

Pronepos linealis.
The lineall Nephewes or Neices Son.

Proneptis linealis.
The lineal nephewes or neices daughter

3

Eorundem.
Of theſe.
Pronepos collat.
The collaterall Nephewes Son
Proneptis collat.
The collaterall Nephewes Daughter.
Et ſic in infinitum.

Abnepos linealis.
The grand Sonne of the lineall Nephew or Niece.

Abneptis linealis.
The grand Daughter of the lineall Nephew or Niece.

4

Atnepos linealis.
The great grand Sonne of the lineall Nephew or Niece.

Atneptis linealis.
The great grand Daughter of the lineall Nephew or Neice.

5

Trincpos linealis.
The great great grand Sonne of the lineall Nephew or Niece. *Et ſic in infinitum.*

Trineptis linealis.
The great great grand Daughter of the lineall Nephew or Niece. *Et ſic in infinitum.*

6

Eorundem.
Of theſe.
Pronepos collat.
The collaterall Nephewes Son
Proneptis collat.
The collatteral Nephewes Daughter.
Et ſic in infinitum.

Place this next before Folio 19.

per possibilitie poit enheriter les tenements per force del done, pur ceo que chescun tiel issue est ỹ s̃ corps engendre.

possibilitie may inherit the Tenements by force of the gift; because that euerie such issue is of his bodie ingendred.

CEn m̃ le maner est lou terres ou tenements sont dones a vn feme, & a ls heires de sa corps issuants, coment que el auoit diuers barons, vncore lissue que el poit auer per chescun baron, poit enheriter come issue en le taile per force ỹ tiel done, & pur ceo tiels dones sont appelles generall tailes.

IN the same manner it is, where lands and Tenements are giuen to a woman, and to the heires of their bodie, albeit that she hath diuers husbands, yet the issue which shee may haue by euery Husband may inherit as issue in taile by force of this gift. And therefore such gifts are called generall tailes.

these Inheritances, or concerning, or annexed to, or exercisible within the same, though they lie not in tenure, therefore all these without question may be intailed. As (t) Rents, Estouers, Commons, or other profits whatsoeuer granted out of Land; Or Iles, Offices, Dignities which concerne Lands or certaine places may be entailed within the said Statute, because all these sauour of the Realtie. But if the grant be of an Inheritance mere personall, or to be exercised about Chattels, and is not issuing out of land, nor concerning any land or some certaine place, such Inheritances cannot be intailed, because they sauour nothing of the realtie. But examples will illustrate and make this learning cleere.

(t) 7.E.3.363.18.E.3.27. 7.H.6.8. 32.H.28. 5.E.4.3. 1.H.7.28.4.H.7.9.1.H.5.1 H.8.fol.3. Newis case. lib. fol.33.34. Pl.Com.in Mannels case fol.2. & 3.

The writ of Assise (u) was De libero tenemento, & made his pleint of the Office of the fourth part of the Seriant of the Common Place, and the writ adiudged good, and seeing that a man hath a free-

(u) 7.Ass.p.12. 7.E.61.

hold, Liberum tenementum in it, by consequent it may bee intailed.

The Office of the keeping of the Church of our Ladie of Lincolne, was intailed, and a Formedon there brought vpon that gift of the Office by the issue in taile. The (x) Office of the Marshall of England intailed. The (y) Office of one of the Chamberlaines of the Exchequer intailed. 1.H.7.28. The Office of a Fostership intailed. 4.H.7.10. 9.E.4.56.b. Charters intailed. 19.H.8. Vse intailed. (z) Nomination to a Benefice intailed.

18.E.3.27.
(x) 5.E.4.3. 10.E.4.14.
(y) 11.E.4.1. 1.H.7.28. 4.H.7.10. 9.E.4.5 26. 19.H.8.3. 1.H.5.1.

Also a name of dignitie may be intailed within the Statute, (a) as Dukes, Marquesses, Earles, Viscounts, and Barons, because they be named of some Countie, Mannor, Towne, or Place. If the issue in taile (b) in a Formedon in the discender be barred by a false verdit, his release is no barre to his issue, albeit the action is at the Common Law.

(a) Lib.7.fol.33.34. Newis cas. 28.H.6. Lord Vesys case.
(b) 14.Ass.2. 3.Eliz. Dier.188.

The like Law is of a Writ of Errour 3.Eliz. Dier 188. If a gift in taile bee made with warrantie, the Donee releases the warrantie, this shall not bind the issue in taile, for to all these cases and the like the said Statute doth extend. But if I grant to a man, and to the heires of his bodie to be Keeper of my Hounds, or Master of my Horse, or to be my Fauiconer, or such like with a fee therefore, yet these cannot bee intailed within the said Statute, for that they be not issuing out of Tenements nor annexed to, or exercisible within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and sauour nothing of the realtie. And so it is if I by my deed for me and my heires grant an annuitie to a man, and the heires of his bodie, for that this only chargeth my person and concerneth no land, nor sauoureth of the realtie.

Pl.Com. in Mannels case.

In all these cases he hath a fee conditionall, as they were before the Statute, and the grantee by his grant or release may barre his heire, as hee might haue done at the Common Law, for that in these cases he is not restrained by the said Statute.

C *Et a ses heires de son corps engendres.* In gifts in taile these words (heires) are as necessary, as in Feoffments and Grants; for seeing euery estate taile, was a fee simple at the Common Law, and at the Common Law no Fee simple could bee in Feoffements and Grants without these words (heires) and that an estate in Fee taile is but a cut or restrained Fee, It followeth that in gifts in a mans life time, no Estate can bee created without these words (heires) vnlesse it bee in case of Frankmarriage as hereafter shall bee shewed. And where Littleton saith (heires) yet (heire) in the singular number in a speciall

case

39. Ass. p.20.
20.H.6.35. 5.H.47.b.
14.H.4.15.

case may create an Estate taile, as it appeareth by 39. Ass. p.20. hereafter mentioned. And yet if a man giue lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good Estate taile to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life the remainder to B. in taile, the remainder to C. in forma prædict. this remainder is void for the incertaintie. But if the remainder had beene, the remainder to C. in eadem forma, this had beene a good Estate taile, for Idem semper proximo antecedenti refertur. If a man giue Lands or Tenements to a man & semini suo, or exitibus vel prolibus de corpore suo, to a man and to his Seed, or to the Issues or Children of his bodie, he hath but an estate for life, for albeit, that the Statute prouideth that Voluntas donatoris secundum formam in charta doni sui manifeste expressam de cætero obseruetur. Yet that will and intent must agree with the rules of Law. And of this opinion was our Authour himselfe, as it appeareth in his learned reading aforementioned vpon this Statute: where he holdeth if a man giueth land to a man. Et exitibus de corpore suo legitime procreatis, or semini suo, yet hath but an estate for life, for that there wanteth words of Inheritance.

Vid. Shellyes case lib.1. fol.

¶ *De son corps.* These words are not so strictly required but that they may be expressed by words that amount to as much; For the example that the statute of W.2. putteth hath not these words (de corpore) but these words (hæredibus) viz. Cum aliquis dat terram suam alicui viro & ejus vxori & hæredibus de ipsis viro & muliere procreatis. If lands be giuen (c) to B. & hæredibus quos idem B. de prima vxore sua legittimè procreauerit. This is a good estate in especiall taile (albeit he hath no wife at that time without these words (de corpore.) So it is (d) if lands be giuen to a man, and to his heires which he shall beget of his wife: (e) or to a man & hæredibus de carne suâ, or to a (f) man & hæredibus de se. In all these cases these be good estates in taile, and yet these words de corpore are omitted.

(c) 3.E.3.tit.brewe 743.
3 E.3.tit. Estates.
(d) 12.H.4.2.
(e) 37.H.6.15.
(f) 5.H.5.6.

It is holden (g) by some opinion, that if there be grandfather, father and sonne, and lands are giuen to the grandfather, and to his heires begotten by the father, the father dieth, the grandfather dieth, the sonne is in as heire to the grandfather begotten vpon the body of his father, and the wife of the grandfather in that case shall be indowed. But certaine it is, that in some cases one shall haue the land per formam doni that is not issue of the body of the Donee which see Section 30.

(g) 12.H.4.2. per Hatton.

¶ *Engendres.* This word may in many cases be omitted or expressed by the like, and yet the state in taile is good; as, Hæredibus de carne, hæredibus de se, hæred quos sibi contigerit, &c. as is aforesaid, and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis, or quos procreauerit, the estate in taile is good: and as procreatis shall extend to the issues begotten afterwards, so procreandis shall extend to the issues begotten before.

18.E.2.tit.Bre.836.
24.E.3.28.

Section 16.

¶ *A vn home & sa feme.* (a) Then put the case that lands bee giuen to a man and a woman vnmarried, and the heires of their two bodies: for the apparant possibilitie to marry, they haue an estate taile in them presently. (b) So it is where lands bee giuen to the husband of A. and to the wife of B. and to the heires of their bodies, they haue presently an estate in taile, in respect of the possibilitie. If a feme sole doe infeoffe a married man causa matrimonij prælocuti, it is good for the possibilitie. But put the case that the premisses and the habendum bee in other manner than Littleton hath put, and let vs see

(a) 5.H.7.10. 11.E.3. Formdon 30. Pl.Com.35.

(b) Lib.1. fol.120. Chudleys case, 40. Ass.pl.13. 34. Ass. pl.1. Fleta lib.5. ca.34.

TEnant en Taile speciall ẽ lour tres ou Tenements sont dones a vn home & a sa feme, & a les hres de lour deux corps engendres; en tiel case nul poet inherit p force de le dit done, forsq ceux q̃ sont ingendres perentr̃ eux deux. Et est appel le spectall Taile, pur ceo que si la fẽe deuy, & il prent auẽ fẽe, & ad issue, issue del se-

TEnant in taile speciall is where Lands or Tenements are giuen to a man and to his wife, and to the heires of their two bodies begotten; In this case none shall inherit by force of this gift, but those that bee engendred between thẽ two. And it is called especiall taile, because if the wife die, and hee taketh another wife, and haue issue, the is-

cond feme ne ſerra jammes inheritable p force d tiel done, ne auxy liſſue del ſecond baron, ſi le prim Baron deuie.

ſue of the ſecond wife ſhall not inherit by force of this gift, nor alſo the iſſue of the ſecond husband, if the firſt husband die.

what the Law is in theſe caſes. (c) As if a man in the premiſſes giue lands to another and the heires of his bodie, habendum to him and his heires for euer; in this caſe he hath an eſtate taile, and a fee ſimple expectant: And ſo (it is ſaid) via verſa, if lands be giuen to a man and to his heires in the premiſſes, habendum to him and to the heires of his bodie, that he hath an eſtate taile, and a fee ſimple expectant. (d) If lands be giuen to B. and his heires, to haue and to hold to B. and his heires, if B. haue heyres of his bodie, and if he die without heires of his bodie that it ſhall reuert to the donor, this is adiudged an eſtate taile, and the reuerſion in the donor. (e) For, Voluntas donatoris in charta doni ſui manifeſtè expreſſa obſeruetur; and therefore in the caſe next precedent, if theſe or the like words be added, (and if he die without heires of his bodie, that the lands ſhall reuert to the donor) that then the habendum ſhall by authoritie of diuers Bookes bee conſtrued vpon the whole deed, to be a limitation or a declaration, what heires are meant in the premiſſes, to inherit, and that in that caſe the reuerſion is in the donor.

(c) 21.H.6.7.

(d) 30.Aſſ.p.47. 35.Aſſ.p.14.37.Aſſ.15. 5.H.5.6.

(e) *Vi.*2.ed.21.

(f) If a man make a Charter of feoffement of an acre of land to A. and his heires, and another deed of the ſame acre to A. and the heires of his bodie, and deliuer ſeiſin according to the forme and effect of both deeds: In this caſe he cannot take a fee ſimple onely, as ſome hold, for that liuerie was made according to the deed in taile, as well as to the Charter in fee, neither can the liuerie enure onely to the deed of eſtate taile with a fee ſimple expectant, for that liuerie was made as well vpon the deed in fee ſimple, as the deed in taile. Therefore others hold, That in that caſe it ſhall enure by mottes, that is, to haue an eſtate taile in the one mottie, with the Fee ſimple expectant, and a fee ſimple in the other mottie: And ſo the liuerie ſhall worke immediately vpon both deeds.

(f) 2.H.6.25.43.E.3.22.

Section 17.

¶ En meſme le maner eſt lou tenements ſont doneſ p vn home a vn auter oue vn feme, que eſt la file ou couſin al donour en frankmariage, p quel doñ ad vn enheritance per ceux parolx (frankmariage) a ceo annexe, coment que ne ſoit expreſſement dit, ou reherce en le done, ceſtaſcauoir, que les donees auerõt les tenemẽts a eux & a lour heires penter eux deux engendreſ. Et ceo eſt dit eſpecial taile, pur ceo que liſſue del ſe-

¶ IN the ſame manner it is, where tenements are giuen by one man to another, with a wife (which is the daughter or couſin to the giuer) in frankmariage, the which gift hath an enheritance by theſe words (frankmariage) annexed vnto it, although it bee not expreſly ſaid or rehearſed in the gift (that is to ſay) that the donees ſhall haue the tenements to them and to their heires betweene them two begotten. And this is called eſpeciall taile, becauſe

¶ *An home oue vn feme.* Albeit the gift is made of the land to the man with his daughter, &c. yet is the gift good to them both in ſpeciall taile, and therefore that of Stephan de la More in (g) 5.E.3. is very remarkeable, where the caſe was, that Robert gaue the reuerſion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum poſt mortem dictæ Agnetis in liberum maritagium cum Iohanna filia eiuſdem Roberti; and it is adiudged that it is a good eſtate taile: wherein three things are to be obſerued; Firſt that Ioane the daughter tooke with her huſband an eſtate in eſpeciall taile, albeit ſhe were named but vnder a cum, viz. cum Iohanna, &c. 2. That that cum doth come after the habendum, for that it is but all one ſentence, 3. That theſe words, in liberum maritagiũ, doe create an eſtate of inheritance in ſpeciall taile as Littleton

*Vid.Sect.*19.20.

5.E.3.17.

(g) *This caſe is vouched in Pl. Com.*158. *to bee in* 4.E.3. *which being not found in that yeare it is there ſo left without any further reference, but you ſhall finde it as aboue ſaid in* 5.E.3.17.

tleton saith, Le donee ad vn inheritance per reason de ceux parolz (frankmariage) a ceo annexe, coment que ne soit expresselment dit, &c. But this had neede of some interpretation, for if lands be giuen by these words (in frankmariage) according to the rules of Law, then doe these words create an estate of inheritance in speciall taile; for the consideration of mariage is in that case more fauoured in Law than any other consideration: But though the gift bee in these words, yet if it be not consonant to the rules of Law in other things requisite thereunto, there they create but an estate for life. And therefore to speake once for all; Foure things bee incident to a frankmariage. First, that it bee giuen for consideration of mariage either to a man with a woman or, as some haue held, to a woman with a man: For in (h) 6.E.3.33. in Peirs de Saltmarsh his case, a man gaue land to his sonne in Frankmariage, and Fitz N.B.172. taketh the Law so also. And 7.E.4.12. per Moyle against a new opinion in temps H.8.Br.tit. Frankmariage the former bookes being not remembred. Secondly, that the woman or man, that is the cause of the gift (i) be of the blood of the Donor, but it may bee made aswell after mariage as before, and it may be made with a widow, &c. Thirdly, if the gift be made of such a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the estate in Frankmariage made. A rent seruice (k) may be giuen in Frankmariage because it may bee holden. And so may a Rent charge or Rent seche as Fitz N.B. holdeth; and it appeareth in our bookes that a Common was granted in Frankmariage. Fourthly, that the Donees shall hold freely of the Donor till the fourth degree be past. And therefore if land be giuen to a woman, with a sonne of the Donor in Frankmariage, there passeth an inheritance, but if the Donee that is the cause of the gift be not the blood of the Donor, then there passeth but an estate for life if Liuery be made. Also if (l) lands be giuen to a man with a woman of the blood of the Donor in liberum maritagium, the remainder in fee either to a stranger or to the Donees they haue no estate taile, because there is no tenure of the Donor, but if (m) in that case, the remainder had beene limitted to another in taile reseruing the reuersion in fee to the Donor there the said words (in liberum maritagium) create an inheritance because the Donees hold of the Donor. And this is the cause that it is holden, That a man cannot deuise land in Frankmariage because the Donee cannot hold of the Donor. And Cesty que vse before the statute of 27.H.8. could not haue made a gift in Frankmariage because the reuersion was in the Feoffees. (n) And if the Donor doth giue lands in liberum maritagium reseruing a rent, this reseruation shall take no effect till the fourth degree be past, but the Frankmariage is good, for if the reseruation should be good, then could not the Donees haue an Estate taile for want of words of the heires of their bodyes.

cond feme ne poit inheriter, &c. the issue of the 2. wife may not inherite.

¶ *En Frankmariage.* Liberum maritagium, **Free mariage**; Maritagium is taken for Fee taile, and deuideth maritagium into liberum & seruitio obligatum: and herewith agreeth Bracton (o) lib.2.cap.34. & 39. Maritagium est aut liberum aut seruitio obligatum. & lib.2.ca.7.nu.3.& 4. liberum maritagium dicitur, vbi donator vult quod terra sic data quieta sit & libera ab omni seculari seruitio. And so, before Bracton, said Glanuill. lib.7. ca.18. Maritagium autem aliud nominatur liberum aliud seruitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ suæ dat cum aliqua muliere in maritagium, ita quod ab omni seruitio terra illa sit quieta, &c. And after both of them Fleta that followed them both, lib.3.cap.1. saith, Est autem quoddam maritagium liberum ab omni seruitio solutum donatori vel ejus hæredi, &c. Et est similiter maritagium seruitio obligatum & oneratum, &c. And these words (in liberum maritagium) are such words of art, and so necessarily required, as they cannot be expressed by words equipollent, or amounting to as much. As if a man giue lands to a man with his daughter in connubio soluto ab omni seruitio, &c. Yet there passeth in this case but an estate for life, for seeing that these words (in liberum maritagium) create an estate of inheritance against the generall rule of Law, the Law requireth that they should be legally pursued. But then it may be demanded if a man had giuen lands at the Common law in libero maritagio, whether had the Donees a fee simple without these words (heires) for that it appeareth by that which hath beene said before that all gifts in taile were fee simple at the Common Law, and that the statute of W.2. did not create any estate in Fee taile but out of an estate in Fee simple. To this it is answered that these words (in liberum maritagium) did create an estate in fee simple at the Common law; and it is holden in 31.E.3. gard.116. Per ceux parolx in frankmariage les donees aueront les terres a eux & a lour heires parenter eux engendres, & ceo est dit especial taile. But yet betweene Donees in Frankmariage and other Donees in speciall taile there be many notable diuersities. If the King giue land to a man and a woman, and the heires of their two bodies, and the woman die without issue, yet shall the man be tenant in taile apres possibilitie? But if the King giue land to a man with a woman of his kindred in a frankmariage and the woman dieth without issue the man in the Kings case shall not hold it for his life because the woman was the cause of the gift, but otherwise

W.2.ca.1.
19.E.3.tit. taile.1.

(h) 6.E.3.33.
Fitz. N.B.172.
7.E.4.12.
15.E.2. Cui in vita.
Sect.24.
(i) 4.E.2.8.
31.E.1.taile.30.
Bracton.lib.2.cap.7.

(k) 22.R.2.tit. discont.50.
Fitz. N.B.212.
9.H.6.35.b.
W.2.ca.1.acc.

(l) Temps H.8. Br. frankm.11
13.E.1. formdon 63.
Vid.32.E.1.tail.25.
2.E.2. Feoffment & fait. 9.
17.E.3.5.a.45.E.3.20.
(m) 20.E.2.aid 174.
31.E.3.Gard 116.

(n) Bracton.lib.2.cap.7.
32.6.1.taile.31.
13 H.4.74.4.H.6.17.
26.Ass.66.31.E.3.gar.29.

26.Ass.p.66 per Wilby.

(o) Bract.lib.2 ca.34. & 39.
& lib.2.ca.7.nu.3.& 4.

Glanuill, lib.7.ca.1.& ca.18.

Fleta.lib.3.ca.1

30.E.1.tit.Formdon.66.
adiudg. acc.

31.E.3.tit.Gard.116.
Mirror.cap 2.§ 15. acc.

9.H.3.Dower 203

wife it is in the caſe of a common perſon. If lands be giuen to a man and a woman in eſpeciall taile and they are diuorced causa præcontractus both ſhall hold the lands for their liues, But in (p) caſe of frankmariage if they be ſo diuorced, the woman ſhall enioy the whole land, becauſe ſhe was the cauſe of the gift. If lands holden in Socage (q) be giuen in eſpeciall taile and the Donees die the iſſue being within the age of 14. yeares, (r) the next of kinne of the part of the father or of the part of the mother which can hap the cuſtody ſhall haue it, but in caſe of frankmariage the heire of the part of the mother ſhall haue it, becauſe as it hath beene ſaid, ſhee was the cauſe of the gift.

7.H.4.16.

(p) 13.E.3.tit.Aſſ. 19.E.3.Aſſ.83. 12.Aſſ. 2. 19. Aſſ.2. 8.E.Aſſ.45.

(q) Pl.Com.Carils caſe.

(r) 17.H.3.tit Gard.146. 27.E.379.

Section 18.

¶ ET nota, quod hoc verbum (Tallaire) idem eſt quod ad quandã certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. **Et pur ceo q̃ eſt limit & mis en certaine, quel iſſue inheritera per force de tiels dones, & come longement lenheritance endurera il eſt appelle en Latin**, feodũ talliatum, .i. hæreditas in quandam certitudinem limitata. **Car ſi tenant in generall taile morust ſans iſſue, l'donor ou ſes heires poiẽt enter cõe en lour reuerſion.**

AND note that this word (*Talliare*) is the ſame as, to ſet to ſome certaintie, or to limit to ſome certaine inheritance. And for that it is limitted and put in certaine, what iſſue ſhall inherite by force of ſuch gifts, and how long the enheritance ſhall indure, it is called in Latine, *feodum talliatum, .i. hæreditas in quandam certitudinem limitata.* For if tenant in generall tayle dieth without iſſue, the Donor or his heires may enter as in their reuerſion.

¶ *ET nota.* This, in our Author throughout his three bookes, betokeneth ſome notable point of inſtruction worthy of more ſpeciall obſeruation which is often (t) vſed by him as you may perceiue by the Sections noted in the margent.

(t) *Sect.*18.37.42.43.49. 50.64.72.89.90.104.108. 114.116.147.158.160. 168.170.183.254.279. 346.387.452.467.618. 669.637.642.670.982. 684.711.717.719.738.

¶ *Feodum talliatum .i. hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what feodum talliatum is. Of all the eſtates tayle moſt coarcted or reſtrained that I finde in our bookes, is the eſtate taile in 39.Aſſ.Pl 20 where lands were giuen to a man and to his wife and to one heire of their bodies lawfully begotten and to one heire of the body of that heire only. This caſe being adiudged in the point is an exception (ſome ſay) out of the generall rule put before by Littleton. Sect 13, that all eſtates tailes were fee ſimple at the Common Law, for (ſay they) by this limitation (hæredi) in the ſingular number the Donees had not had a fee ſimple at the Common law. Vide regiſtrum iudiciale, fo.6. a gift made to a man & hæredi maſculo de corpore ſuo.

Weſt.2.cap.1. Pl.Com.251.a.

39. *Aſſ. pl.20.*

*Sect.*13. *Vid.pl.com. fo.29.b.*

Regiſt iudic fo.5.

Section 19.

¶ **EN meſm̃ le maner eſt del tenant en ſpecial taile, &c. Car en chaſcun done en le taile ſauns pluis ouſter dire, le reuerſion del fee ſimple eſt en le donor. Et les donees &**

IN the ſame manner it is of the tenant in eſpeciall taile, &c. For in euery gift in taile without more ſaying, the reuerſion of the fee ſimple is in the donor. And the donees and

¶ *EN chaſcun done en taile ſans pluis ouſter dire, le reuerſion del fee ſimple eſt en le donor.* This is wrought by the conſtruction of the ſtatute of W.2. cap.1. which hath turned the fee ſimple of the Donee into a particular eſtate of inheritance, and the poſſibility of the Donor to a reuerſion in him expectant vpon the eſtate taile, ſo

(t) 12.E.4.23. 5.H.7.14. Weſt.2.ca.13. Pl.Com.247. 248.251.562.2.E.2.in.reſorc.147. 33.H.6.29.39.6.3.18.45. E.3.30.

ſo as there be two inheritances of one land, yet this was doubted in our Bookes (t) & there reſolued according to Littleton. But I ſee no cauſe wherefore that point ſhould be drawne in queſtion, for at the ſame Seſſion of Parliament (in which the Statute de donis conditionalibus was made) viz. ca.3. it is expreſſely ſaid, vel per donum in quo reſeruatur reuerſio, ſo as by the iudgement of the ſame Parliament a reuerſion was ſetled in the Donor.

¶ *Le reuerſion del fee ſimple eſt en le donor.* A reuerſion is where the reſidue of the eſtate alwayes doth continue in him that made the particular eſtate, or where the particular eſtate is deriued out of his eſtate, as here in the caſe of Litt. Tenant in Fee ſimple, maketh a gift in taile, ſo it is of a Leaſe for life, or for yeares. If a man extend Lands by force of a ſtatute Merchant, ſtaple, recognizance or Elegit, he leaueth a reuerſion in the Conuſor. But ſince Littleton wrote, the deſcription muſt be more large vpon the Statute of (a) 27.H.8. for at this day, if a man ſeiſed of lands in fee make a Feoffment in fee, (and depart with his whole eſtate) and limit the vſe to his daughter for life, and after her deceaſe, to the vſe of his ſonne, in taile, and after to the vſe of the right heires of the Feoffor. In this caſe, albeit he departed with the whole fee ſimple by the feoffment, and limitted no vſe to himſelfe, yet hath he a reuerſion (b) for whenſoeuer the Anceſtor takes an eſtate for life, and after a limitation is made to his right heires, the right heires ſhall not be purchaſors. And here in this caſe when the limitation is to his right heires, and right heire he cannot haue during his life (for non eſt heres viuentis) the Law doth create an vſe in him during his life, vntill the future vſe commeth in eſſe, and conſequently the right heires cannot be purchaſors, and no diuerſitie when the Law creates the eſtate for life, and when the partie. And all this was adiudged betweene (c) Fenwick and Mitford in the Kings Bench; and if the limitation had beene to the vſe of himſelfe for life, and after to the vſe of another in taile, and after to the vſe of his owne right heires, the reuerſion of the fee had beene in him, becauſe the vſe of the fee continued euer in him; and the Statute doth execute the poſſeſſion to the vſe in the ſame plight, quality and degree as the vſe was limitted.

(a) 27.H.8.ca.10.

(b) 38.E.3.26.27.E.3.aga 118.24.E.3.36. 40.E.3.

(c) Tr.31.Eliz. inter Fenwicke & Mitford. 32.H.8.gard.93. 28.H.8.Dier.8.9.10.&c. Buckenham caſe. 5.Marie. Dier 163.

(d) If a man make a gift in taile or a leaſe for life, the remainder to his own right heires, this remainder is void, & he hath the reuerſion in him, for the Anceſtor during his life, beareth in his bodie (in iudgement of law) all his heires, and therefore it is truly ſaid that Hæres eſt pars anteceſſoris. And this appeareth in a common caſe, that if land be giuen to a man and his heires, all his heires are ſo totally in him, as he may giue the lands to whom he will.

(d) 1.H.5.8.4.H.6.20. 9.Eliz.Dier. Bromleys caſe.

(e) Dier.5.Marie 156. Grofwilds caſe adiudge. Bendlowes ſeriant in his report agreeth.

(e) So it is if a man be ſeiſed of lands in Fee and by indenture make a Leaſe for life, the remainder to the heires male of his owne bodie, this is a void remainder, for the Donor cannot make his owne right heire a purchaſer of an Eſtate taile without departing of the whole Fee ſimple out of him: as if a man make a Feoffment in fee to the vſe of himſelfe for life, and then to the vſe of the heires males of his bodie, this is a good Eſtate taile executed in himſelfe, and the limitation is good by way of vſe, becauſe it is raiſed out of the ſtate of the Feoffee, which the Feoffor departed with, and that is apparant, for a limitation of vſe to himſelfe had without queſtion beene good.

(f) If a man make a Feoffment in fee to the vſe of himſelfe in taile, and after to the vſe of the Feoffee in fee, the Feoffee hath no reuerſion, but in nature of a remainder, albeit the Feoffor haue the Eſtate taile executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of obſeruation.

(f) 20.Eliz.Dier.

lour iſſues ferront al donor & a ſes heires autiel ſeruices, cõe le donor fait a ſon Seignior ycelein a luy Parament, forſprise les donees in frankmarriage, les queux tiendront quietement de cheſcun maner de ſeruice, ſinon que ſoit per fealtie tanque le quart degree ſoit paſſe, & apres ceo q̃ le quart degree ſoit paſſ, iſſue en le cinq degree, & iſſint ouſk lauks des iſſues apres luy, tiendrõt del doñ ou ſes heires cõe ils teignõt ouster, cõe il eſt auãtd

their iſſue ſhall doe to the Donor, and to his heires the like ſeruices, as the Donor doth to his Lord next Paramont, except the Donors in Frankmarriage who ſhall hold quietly from all manner of ſeruice (vnleſſe it bee for fealtie) vntill the fourth degree is paſt, and after the fourth degree is paſt, the iſſue in the fift degree, and ſo forth the other iſſues after him, ſhall hold of the Donor or of his heires as they hold ouer, as before is ſaid.

To concludes this point (g) whosoever is seised of land, hath not only the Estate of the land in him, but the right to take profits, which is in nature of the vse, and therefore when he makes a Feoffment in Fee without valuable consideration to diuers particular vses, so much of the vse, as he disposeth not, is in him, as his ancient vse in point of reuerter. As if a man be seised of two Acres, the one holden by Knights service, by priorite, and the other by Knights seruice holden by posteriorite, and maketh a feoffment in fee of both Acres to the vse of himselfe and his heires, the old vse continued in him, and the priorite and posteriorite remayne. So it is of lands of part of the mother, the vse shall goe to the heire of the part of the mother, which could not be, if it were not the old vse, but a thing newly created: the like law of lands, of the custome of Borough English Gauelkind, &c.

(g) 13.H.7.6. 28.H.8.Dier.12.

5.E.4.7. *Lib.*1.76.84.85.100.&c. *Cowley.* *Lib.*2.56.57.58.77.78. *Lib.*4.22. *Lib.*6.34.43.

¶ *Les dones & lour issues ferront al donor & a ses heires autiels services come le donor fait a son seignior procheine a luy paramount.* The reason of this is, that when by construction of the said Statute, there was a reuersion seised in the Donor for that the Donee had an Estate of inheritance, the Iudges resolued that he should hold of his Donor, as his Donor held ouer: as if the Tenant had made a Feoffment in Fee at the Common Law, the Feoffee should haue holden of the Feoffor as he held ouer; and before the Statute of W.2. the Donee had holden of the Donor as of his person, and now of him as of his reuersion: but if a man make a Lease for life, or yeares, and reserue nothing, hee shall haue fealtie only and no rent, though the Lessor hold ouer by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no speciall reseruation, for then the speciall reseruation excludes the tenure which the Law would create. As if Tenant by Knights seruice maketh a gift in taile reseruing Fealtie and Rent, the Donee shall hold in Socage, by Fealtie, and Rent, and not by Knights seruice. But if a man hold land of the King in grand Seriantie, and maketh a guift in taile generally, in this case the Donee shall not hold of the Donor by graund Seriantie, because no man can hold by graund Seriantie, but of the King only, as hereafter shall be said, and therefore seeing graund Seriantie doth include Knights Seruice, he shall in that case hold of the Donor by Knights Seruice. If a man seised of land in the right of his wife holden by Knights Seruice giueth the same lands in taile generally, the Donee shall not hold of him by Knights Seruice, because his wife held the land, and he had nothing but in her right. And in that case the Baron hath gained a new reuersion by wrong, and therefore such a Donee shall doe Fealtie only.

A. seised of two acres of land, holdeth the one of B. by Knights Seruice, and twelue pence Rent, and the other of C. in Socage and one pennie Rent, and makes a gift in taile of both Acres without any expresse reseruation of any tenure, In this case the Donor hath but one reuersion. And yet he shall make seuerall auowries, because there be seuerall tenures created by Law, in respect of the seuerall tenures ouer: and the auowrie is made in respect of the tenures.

Lord, Mesne and Tenant, the Tenant holdeth by foure pence, and the Mesne by twelue pence, the Tenant makes a gift in taile without reseruing any thing, by reason whereof he holdeth by foure pence, in respect of the tenure ouer. Afterwards the reuersion escheate, now shall the Donee hold by twelue pence, for the Mesnaltie which was foure pence is extinct, and the law reserued the tenure vpon the gift in taile, in respect of the Mesnaltie, and when the Mesnaltie is extinct, the former Rent betweene the Donor and Donee is extinct also, and then by the same reason that the Donee shall take aduantage, if the Donor by release or confirmation had holden by lesser Seruices, by the same reason he shall be preiudiced, when he holdeth by greater seruices.

49.E.3.10.

¶ *Forspris les donees en Frankmarriage.* It is to bee vnderstood, that although the Land be giuen in liberum maritagium, in free marriage generally, yet first the Law doth make a limitation of this word (free) viz. till the fourth degree bee past, for the reason that our Author here yeelds. And 2. albeit it bee free marriage, yet the Donees and their issues vntill the fourth degree be past shall doe fealtie, for that is incident to euerie tenure (except Frankealmoigne) and cannot be separated from it, and therefore the Donees and their issues shall hold it as freely till the fourth degree be past, as the Donor can make it. See more of this in the Chapter of Frankalmoigne.

Bracton.lib.2.fol.21. Britton.cap.119 Fleta lib.3.cap.11.& lib.5. cap.2. Vide Sect.17.20.

Sect. 20.

¶ Tles degrees en frankmariage serrõt accõpts en tiel maner, &c. de

And the degrees in frankmariage shal bee accounted in this manner, *viz.* from

¶ What Littleton saith (a) that the Donees in frankmariage shall hold by fealtie only vntill the fourth degree

(a) *Vide Sect.*17.19.138. 268.269.271.733.

(b) Glanvil. lib. 7. cap. 18. Bract. lib. 2 fol. 21. Britton. cap. 119. Fleta lib. 3. cap. 11. & lib. 6. cap. 2.

(c) Vide 19. E. 3. tit. monstr. 157. 21. E. 3. cessauit 22. 21 E. 3. gard. 116. 21. H. 7. 30.

1. Tulo

degree be past: then the issue in the fift degree shall hold of the Donor as the Donor holdeth ouer; (b) Vide Bracton vbi supra, Ita quod ille cui terra sic data fuit, nullum inde faciat seruitium vsque ad tertium hæredem & vsque quartum gradum, ita quod tertius hæres sit inclusus. And herewith also agreeth, Fleta vbi supra. And the (c) learning of degrees set out in the Ciuill and Canon Law (wherein I finde some difference) is worth the knowledge, to the end that Littleton and the law in this case may the better bee vnderstood, which I will deuide into certain rules, whereof the first is; That a person added to a person in the line of Consanguinitie maketh a degree. And it is to bee vnderstood that a line is threefold, viz. the line ascending, discending, and collaterall. And first for example, of the ascending line, take the Sonne and adde the Father, and it is one degree ascending, adde the Grandfather to the Father, and it is a second degree ascending

So as how many persons there be, take away one, and you haue the number of degrees. If there be foure persons it is the third degree, if fiue the fourth, for one must exceed, and then you haue the degree. Likewise by the discending, take the Father, and adde the sonne, and it is one degree, then take the Sonne and adde the Grandchild, and it is the second degree, and so likewise further, wherein obserue that the Father, Sonne and Grandchild, albeit there are three persons, yet they make but two degrees, because (as it hath beene said) one must exceed for making a degree.

It is to bee noted, that in euery line the person must be reckoned from whom the computation is made. And there is no difference betweene the Canon and Ciuill Law in

le donor a les donees en frankmarriage, le primer degree, pur ceo que la feme que est vn des donees couient estre file, soer, ou aut cousin a le donor. Et de les donees tanque a lour issue il serra accompt le second degree, & de lour issue tanque a son issue, le tierce degree, & issint ouster &c. Et la cause est, pur ceo que apres chescun tiel done les issues queux veignont de le donor, & les issues queux veignont de les donees apres le quart degree passe de ambideux parties en tiel forme destre accompt, poyent enter eux per la ley de saint Esglise entermarie. Et que le donee en frankmarriage serra dit le prime degree de les quart degrees hoc poit veier en vn plee sur vn bre de Droit de Garde P. 21. E. 3. Lou le Pl. counta, que son tresaiel fuit seisie de certe terre, &c. & ceo tenust dun autre per seruice de chiualer, &c. quel dona la terre a vn Rafe Holland ouesque sa soer en frankmariage, &c.

the Donor to the Donees in frankmariage the first degree, because the wife, that is one of the donees ought to be daughter, sister, or other cosen to the Donor, & from the donees vnto their issue shall be accounted the second degree, and from their issue vnto their issue the third degree, and so forth. And the reason is, because that after euery such gift, the issues of the Donor, & the issue of the Donees after the fourth degree past of both parties in such forme to bee accounted may by the Law of the holy Church entermarrie. And that the Donee in frankmarriage shall be said to bee the first degree of the foure degrees, a man may see in a plea vpon a Writ of Right of Ward, P. 21. E. 3. where the Pl. pleadeth that his great Grandfather was seised of certaine Lands, &c. and held the same of another by Knight Seruice, &c. who gaue the Land to one *Raphe Holland* with his sister in Frankmarriage, &c.

the ascending and discending line, for those whom the Ciuilians doe reckon in the second degree, the Canonists doe reckon in the first, and those whom they place in the fourth, these place in

in the ſecond. Therefore if we will know in what degree two of kindred doe ſtand according to the Ciuile Law, wee muſt begin our reckoning from one, by aſcending to the perſon from whom both are branched, and then by diſcending to the other to whom we doe count, and it will appeare in what degree they are. For example, In brothers & ſiſters ſonnes, take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree, then deſcend from the grandfather to his ſonne, that is the third degree, then from his ſonne to his ſonne, that is the fourth. But by the Canon Law there is another computation, for the Canoniſts doe euer begin from the ſtocke, namely from the perſon of whome they doe diſcend, of whoſe diſtance the queſtion is. For example, if the queſtion be, In what degree the ſonnes of two brothers ſtand by the Canon Law: wee muſt begin from the grandfather, and diſcend to one ſonne, that is one degree; then diſcend to his ſonne, that is another degree; then deſcend againe from the grandfather to his other ſonne, that is one degree; then diſcend to his ſonne, that is a ſecond degree, ſo in what degree either of them are diſtant from the common ſtocke, in the ſame degree they are diſtant betweene themſelues: And if they bee not equally diſtant, then we muſt obſerue another rule. In what degree the moſt remote is diſtant from the common ſtock, in the ſame degree they are diſtant betweene themſelues, and ſo the moſt remote maketh the degree. And albeit the donee be a Coſine in the third or fourth degree from the donor, yet in this computation it maketh the firſt degree: Gradus dicitur a gradiendo, quia gradiendo aſcenditur & diſcenditur. And thus much of the Ciuile and Cannon Law is neceſſarie to the knowledge of the Common law in this point: And herewith agreeth our Author in the words following:

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le 4. degree paſſe dambideux parties in tiel forme deſte accoũt poient enter eux per le Ley de Saint Eſgliſe entermarrier.* (De Saint Eſgliſe) (d) So as hereby it appeareth, That the computation of the degrees in this caſe, muſt bee according to the Cannon Law. But it is neceſſarie to bee knowne concerning marriages betweene perſons of kindred one to another, that it is enacted (e) by the Statute of 32. H. 8. that no reſeruation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Leuiticall degrees.

(d) *Brit. ca. 119. Accord. Flet. lib. 3. ca. 11. & lib. 6. c. 2.*

(e) *32. H. 8. ca. 38.*

The caſe vouched by Littleton in 31. E. 3. you ſhall find abridged by Fitzh tit. gard 116. And albeit this yeare of 31. E. 3. was neuer in print till Fitzhebert did abridge it and publiſh it in print anno 11 H. 8. and goeth vnder the name of broken yeares, yet heere it appeareth by our Author, that the ſame is of authoritie in Law, as hereafter alſo in other places ſhall bee obſerued.

Sect. 21.

¶ ET touts ceux tailes auãtdits, ſont ſpecifies en l' dit eſtatute de W. 2. Auxy ſont diuers auts eſtates en le taile, coment q̃ ne ſont ſpecifies per expreſſe parols in le dit eſtatut, mes ils ſont priſes per le equitie de l' dit Statute. Sicome Terres ſont dones a vn home & a ſes heires males de ſon corps engendres, en

And all theſe Entailes aforeſaid be ſpecified in the ſayde Statute of *W.* 2. Alſo there bee diuers other eſtates in taile, though they bee not by expreſſe words ſpecified in the ſaid Statute, but they are taken by the equitie of the ſame ſtatute. As if lands be giuen to a man, and to his heires males of his bodie begotten, in this caſe his iſſue male ſhal

¶ *ET touts ceux Tailes auauntdits ſont ſpecifies en le dit Statute de Weſtminſter* 2. And ſo it appeareth by the ſayd Statute, Auxy ſont diuers auters eſtates en le taile, &c. And herewith agreth Carbonels Caſe, 33. Edw. 3. titulo Taile 5.

That the caſes of the ſtatute are ſet downe but for examples of eſtates taile, generall and ſpeciall, and to exclude other eſtates taile. 3. E. 3. 32. 18. Aſſ. p. 5. 18. E. 3. 46. 1. Mar. Dyer 46. Pl. Com. Seignior Barkleys caſe, fo. 251. For, Exempla illuſtrant non reſtringunt legem.

3. E. 3. 32. 18. E. 3. 46. 18. *Aſſ. p.* 5. 1. *Mar. Dy.* 46. *Pl. Com.* 251.

¶ *Equitie*

¶ *Equitie* is a construction made by the Iudges, that cases out of the letter of a statut, yet being within the same mischiefe, or cause of the making of the same, shall bee within the same remedie that the Statute prouideth: And the reason hereof is, for that the Law maker could not possibly set downe all cases in expresse termes, Equitas est conuenientia rerum quæ cuncta coiquiparat, & quæ in paribus rationibus paria iura & iudicia desiderat. And againe, Equitas est perfecta quædam ratio quæ ius scriptum interpretatur & emendat, nulla scriptura comprehensa, sed solum in vera ratione consistens. Equitas est quasi equalitas. Bonus judex secundum equum & bonum iudicat, & equitatem stricto iuri præfert. Et ius respicit æquitatem.

tiel case ſ issue male inherita, & le issue femal ñ vnqz enherita pas, vncoz in ls autz tailes auantdits auterment est.

inherit, and the Issue female shall neuer inherit, and yet in the other entailes aforesaid, it is otherwise.

Brast. lib. 4. fol. 186. (b) 18. Ass. p. 5. 18. E. 3. 46. 33. E. 3. tit. Taile 5. 3. E. 3. 32. Pl. Com. Seigniur Berkleys case, 1. Mar. Dy. 96. V. Sect. 24.

¶ *Sicome terres ſont done a vn home & a les* (b) *heires males de ſon corps engendres, en tiel caſe ſon iſſue male inheritera, & liſſue female ne vnques inheritera, &c.* This shall be explained afterward, Sect. 24.

Sect. 22. & 23.

¶ These two Sections, or any thing therein, do neede no explanation, in respect they shall be also explained hereafter in the next Section, sauing onely these words (queux doient inheriter) are verie obseruable, for they implie a diuersity betweene a discent and a purchase. For when a man giueth lands to a man and the heires females of his body, and dyeth hauing issue a son and a daughter, the daughter shall inherit, for the will of the donor (the Statute working with it) shall bee obserued. But in case (g) of a purchase it is otherwise: For if A. haue issue a sonne and a daughter, and a lease for life be made, the remainder to the heires females of the bodie of A. A. dieth, the heire female can take nothing, because she is not heire; for shee must bee both heire and heire female, which she is not, because the brother is heire, and therefore the will of the giuer cannot be obserued, because heere is no gift, and therefore the statute cannot worke thereupon. And so it is if a man hath a a sonne and a daughter, and dieth, and lands bee giuen to the daughter, and the heires females of the bodie of her father, the daughter shall take

(g) 9. H. 6. 24. 11. H. 6. 13. 14 37. H 8. Br. tit. Done 42. Tit. nosme 1. & 40. Dyer 23. El. 374. Shelleys case lib. 1. fo.

C Item mẽ l' manner est, si tres ou tenemẽts soint doneʒ a vn hõe & a ſes hẽs females de ſon coꝛpꝰ engendꝛes; en tiel caſe ſon iſſue female luy inheritꝛa p foꝛce & foꝛm de l' dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le taile, queux doient enheriter, & q̃r nemi, la volunt ỹl donoꝛ ſerr̃ obſerue.

IN the same manner it is, if Lands or Tenements bee giuen to a man, and to his heires females of his bodie begotten; In this case his issue female shall inherit by force and forme of the said gift, and not his issue male. For in such cases of gifts in taile, the wil of the Donor ought to bee obserued, who ought to inherit, and who not.

C Et en le caſe q̃ terr̃s ou tenements ſont doneʒ a vn hõe, & a ſes heires males ỹ s̃ coꝛpꝰ iſſuants, & il ad iſſue deux fits, & deuy, & leign fitz entra come hr̃ male, & ad iſſue file & deuy, s̃ frer̃ aũa la fr̃, & nemi la file, pur

AND in case where lands or tenemẽts be giuen to a man, and to the heires of his bodie, and hee hath issue two sonnes, and dieth, and the eldest son enter as heire male, and hath issue a daughter, and dieth; his brother shall haue the land, &

nothing

ceo que le frere eſt heire male. Mes auterm̃t ſra en auters tailes q̃r ſont ſpecifies en le dit Statute.

not the daughter, for that the brother is heire male. But otherwiſe it is in the other entailes, which are ſpecified in the ſayd Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon, ſhe being not heire. But where a gift is made to a man, and to the heires female of his bodie, there the Donee being the firſt taker, is capable by purchaſe, and the heire female by diſcent, ſecundum formam doni: And therefore Littleton purpoſely added theſe words, Queux doient inheriter.

Sect.24.

¶ Auxy ſi tres ſoient doñs a vn hõe, & a ſes hẽs males de ſon corps ingendres, & il ad iſſue file, q̃l ad iſſue fits & dye, & puis apres l' donee deuie, en ceſt caſe le fits de la file ne inheritera paſſe p force de le taile, pur ĉ que quecunque que ſerra inherit̃ per force dun done en le taile fait as hẽs males, couient conueier ſon diſcent tout per les Heyres Males. Mes en tiel caſe le donor poet ent̃r p ĉ q̃ le donee ẽ mort ſans iſſue male en la Ley, entaunt que l' iſſue del file ne poet conueyer a luy meſme le diſcent per Heyre male.

ALſo if lands be giuen to a man and to the heires males of his bodie, and he hath iſſue a daughter, who hath iſſue a ſonne, and dieth, and after the donee die; In this caſe, the ſon of the daughter ſhall not inherit by force of the entaile, becauſe whoſoeuer ſhall inherit by force of a gift in taile made to the heires males, ought to conuey his diſcent wholly by the heires males. Alſo in this caſe the donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot conuey to himſelf the diſcent by an heire male.

¶ *Quecunque ſerra enheriter per force dun done en Taile, &c.* Vide Tr. (h) 28. H.6. Tit. Deuiſe 18. (which is not in the booke at large, but written verbatim out of Stathã) If a man deuiſe lands to a man, and to the heires males of his bodie, and hath iſſue a daughter, which hath iſſue a ſonne, this ſonne ſhall be inheritable, and notwithſtanding in a gift in taile the Law is otherwiſe, and that by the opinion of all the Iudges, in the Exchequer Chamber. But I hold this caſe to be ill reported, vnleſſe you will refer the opinion of the Iudges to the gift in taile laſt mentioned. For firſt, albeit a Deuiſe may create an Inheritance by other words than a gift can, yet cannot a Deuiſe direct an inheritance to diſcend againſt the rule of Law. Secondly, there is no intent of the deuiſor appearing, that the ſonne of the daughter ſhould, againſt the rule of Law, inherit, and the Statute prouideth, that voluntas Donatoris, &c. obſeruetur. And I haue heard this caſe often denied to bee Law, both in the Kings bench, and in the Common pleas, Vide Pl. Coment. 414. b. And ſo it is (i) mutatis mutandis, when a gift in taile is made to a man, and to his heires females of his bodie, and he hath iſſue a ſonne, who hath iſſue a daughter, this daughter ſhall neuer inherit, becauſe ſhe muſt conuey by diſcent from females. And for the reaſon hereof, ſee a notable Caſe in 15. E. 2. tit. Corone 385. where it is adiudged (as before it had beene) That the ſonne of a female ſhould haue an appeale of the death of a coſine; and yet the daughter her ſelfe ſhould neuer haue had it. But there it is agreed, that the ſonne of a female (k) in a Libertate probanda, ſhould be no witneſſe or proofe againſt the iſſue of the male. And the reaſon of this diuerſitie is verie obſeruable: For by the Common Law the female might

Vide Sect. 719.
(h) *1. H.6. 24 11, Ii 6, 13. 14 28 H.6. tit. Deuiſe 18. Statham tit. Deuiſe. Pl. Com. in in Scholaſt. caſe, 414. b. 20. H.6. 43. 37. H.8. Br. tit. Done & Rem. 61. tit. noſme 1. & 40.*

(i) *11. H.6. 13.*

15. E. 2. Tit. Cor. 386.

(k) *Mirror. l. 2. § 7. Vi. Glanuile lib 14. cap. 3.*

Vid. Seignior de la Warr case. lib. 11. fo. 1.

might haue had an appeale as heire to any of her Ancestors, as well as the male. But by the Statute of magna carta, cap. 34. Nullus capietur aut imprisonetur propter appellam feminæ de morte alterius quam viri sui, which restraineth not the sonne of the female. And there Scrope saith Per tout le Serjant d'Angliterre, that is, by all the Judges of the Coife in England, it was awarded, that the issue of the female should haue an appeale for the death of his cousin. But in a libertate probanda, the issue of the blood female shall not be received to prove Villenage in the issue of the blood male, for the mother was disabled by the Common law, & the mother might be a neife Deen & trene, that is of the water and whip of three corde, (meaning such a bondwoman as is vsed to seruile workes and correction) and enfranchised by her husband. All which appeareth in the said booke. And it is holden in 17 E.4.1. that if a man be slaine which hath no heire of the part of his father, that his vncle of the part of his mother shall haue the appeale, and yet he must of necessity make his conueyance by a woman. Vid. 20.H 6. fo. 33. the question suddenly demanded and debated, and no consideration or mention had of the said former iudgements and authorities; there it is compared to a gift in taile to a man and to his heires males of his body, that the heire male of the daughter shall not inherit which hath no affinitie to it, and yet the authoritie of the booke is great, for it is by the assent of all the Iustices of the one bench and the other in the Exchequer chamber, and therefore I leaue the learned and iudicious reader to his owne iudgement. (l) Vid. Stanford. 58.b. 15.E.2. 384. If a man giue lands to a man and to the heires males of his body begotten, remainder to him and to his heires females on his body begotten, the Donee hath issue a sonne who hath issue a daughter, who hath issue a sonne, this sonne is not inheritable to either of both their estates taile, because as Littleton saith, The Male must make his conueyance only by males and so must the Females by Females. But in this case the land shall reuert to the Donor. And therefore the safest way when a man will entaile his lands to the heires males and females of his body, is to limit the first estate to him and the heires males of his body, the remainder to him and to the heires of his body, and then all his issues whatsoeuer are inheritable. But if A. hath issue a sonne and a daughter and dieth, and the sonne hath issue a daughter and dieth, and a Lease for life is made, the remainder to the heires females of the body of A. In this case the daughter of A. shall not take causa qua supra. But albeit the daughter of the sonne maketh her conueyance by a male she shall take an estate taile by purchase, for she is heire and a female; but if lands be deuised to one for life, the remainder to the next heire male of B. in taile, and B. hath issue two daughters and each of them hath issue a sonne and the father and daughters die, some say this remainder is voide for the vncertaintie, some say that the eldest shall take it because he is worthiest, and others say that both of them shal take for that they both make but one heire. If lands be giuen to a man and to his heires males or females of his body hee hath an estate in generall taile in him.

17.E.4.1

20.H.6.43.

(l) Stanford, 58.6. 15.E.2.tit.Coron.384.

11.H.6.13. 9.H.6.25.

Section 25.

¶ A *Vn home, & a sa feme.* But what if tenements be giuen to a man, and to a woman being not his wife, and to the heires males of their two bodies, they haue also an estate taile, albeit they bee not married at that time. And so it is if lands bee giuen to a man which hath a wife, and to a woman which hath a husband, and the heires of their two bodies, they haue presently an estate taile (m) for the possibility that they may marry. But if lands be giuen to two husbands and their wiues, and to the heires of their bodies begotten (n) they shall take a ioynt estate for life and seuerall inheritances, viz. the one husband and his wife the one mottie, and the other husband and wife the other mottie, and no crosse remainder or other possibility shall be allowed by law, where it is once settled and take effect. But if lands be giuen to a man and two women and the heires of their bodies begotten, (o) In this case they haue a ioynt estate for life and euery of them seuerall inheritance, because they cannot haue one issue of their bodies, neither shall there be by any construction a possibility vpon a possibility, viz. that he shall marry the one first and then the other. And the same Law it is (p) when land is giuen to two men and one woman, and to the heires of their bodies begotten.

11.E.3.Fornden 20.

(m) 15 H.7.10. Lib.1. Dien & fremu case. 40.Ass.p.13.

(n) 24.E.3.29.a.

(o) 7.H.4.16. 16.E.3.98. Littleton fo 66. 15.Eliz. Dier. 326.

(p) 44.E.3.tit.Iointen.13.

CEN meisme le maner est, lou tenements sont done a vn hõe, & a sa feme, & a les heires males de lour deux corps engendres, &c.

IN the same manner it is, where lands are giuen to a man and his wife, and to the heires males of their two bodyes begotten, &c.

Section 26.27.

26.27. These two Sections haue no explanation at all.

¶ Item si tenēts soient dones a vn home & a sa feme, & a les heires del corps del home engendres, en cē case le barō ad estate en le taile generall, et la feme forsq; estate pur terme de vie.

Also if tenements be giuen to a man and to his wife, and to the heires of the body of the man; In this case the husband hath an estate in generall taile, and the wife but an estate for terme of life.

¶ Item si tres soient dones a le baron & sa feme, & a les heires le baron, q̄ux il engendra de corps sa feme, en ceo case le baron, ad estate en le taile special, & la feme forsq; pur terme de vie.

Also if lands bee giuen to the husband and wife, and to the heires of the husband which hee shall beget on the body of his wife, In this case the husband hath an estate in especiall taile and the wife but an estate for life.

Sect. 28.

¶ Et si le done soit fait al baron & a sa feme, & a les heires la feme de sa corps per le baron engendres, donq; la feme ad estate en special taile, & le baron forsq; pur terme de vie: Mes si terres sont dones a le baron & a la feme, & a les heires que le baron engendra de corps la feme, en ceo case ambideux ont estate en la taile, pur ceo que cest parol (heires) nest limit a lun pluis que a lauter.

And if the gift be made to the husband and to his wife, and to the heires of the body of the wife by the husband begotten, there the wife hath an estate in speciall taile, & the husband but for terme of life: but if lands be giuen to the husband & the wife, and to the heires which the husband shall beget on the body of the wife, in this case both of them haue an estate taile, because this word (heirs) is not limitted to the one more then to the other.

¶ *Heires.* This word (heires) is nomen operatiuum, to which of the Dones it is limitted, it createth the estate taile, but if it incline no more to the one than to the other, then both doe take as here Littleton putteth the case. And therewith accordeth the case of (q) 3.E.3. where it appeareth; Quod Robertus de S. dedit Iohanni de Riperijs & Matildæ vxori eius, & hæredibus quos idem Iohannes de corpore ipsius Matildæ procrearet, &c. and this adiudged to be an estate in especial taile in them both, because the state is equally tailed to the heires of the baron as to the heires of the wife. If lands be giuen to the husband and the wife, and to the heires of the body of the survivour, the gift is good, and the survivour shall haue an estate in taile generall, but the estate taile resteth not till there be a survivour. And hereby it appeareth (r) that a gift made to a man and to the heires of his body, is as good as to his heires of his body.

19.H.6.75.a. Regist. 239. 17.E.3.tit.Taile 23. 3.E.3.32. 4.E.3.43. 5.E.3.29.b. & 34.a. 21.E.3.43. 12.H.4.1.

(q) 3.E.3.32. 21.E.3.43. 19.H.6.75. per Mod.

Regist. 239.

(r) 20.E.3.Br. 377.

Section 29.

¶ This is euident by that which hath been ſaid and needeth no explanation. But it hath been ſaid, (ſ) that if a man giue land to another and to his heires of the body of ſuch a woman lawfully begotten, that this is no eſtate taile for the vncertainty by whom the heires ſhall bee begotten, for that the brother of the Donee or other couſin may haue iſſue by the woman which may be heire to the Donee, and eſtates in taile muſt be certaine. Therefore our Author to make it plaine in all his caſes added to theſe words (his heires) which he ſhall ingender. But that opinion is ſince our Author wrote ouer-ruled, and that eſtate adiudged to be an eſtate taile, and begotten ſhall be neceſſarily intended begotten by the Donee.

20.H.6.36.
(ſ) Lib.1.fo.140.b. Chaulreigh's caſe adiudge.

¶ Item ſi terre ſoit done a vn home & a ſes heires que il engendra de corps ſa feme, en ceo caſe le baron ad eſtate en eſpecial taile, & la feme nad riens.

ALſo if land bee giuen to a man and to his heires which he ſhall beget on the body of his wife, In this caſe the husband hath an eſtate in eſpeciall taile, and the wife hath nothing.

Section 30.

¶ S. *I home ad iſſue fits & deuie, &c.* John de Mandeuile by his wife, Roberge had iſſue Robert and Mawde, Michael de Morevill gaue certaine lands to Roberge and to the heires of Iohn Mandeuile her late husband on her body begotten, and it was adiudged that Roberge had an eſtate but for life, and the fee taile veſted in Robert (heires of the body of his father being a good name of purchaſe) and that when he died without iſſue, Mawde the daughter was tenant in taile as heir of the body of her father per formam doni, and the Formedon which ſhee brought ſuppoſed, Quod poſt mortem prefatæ Robergiæ & Roberti filij & hæredis ipſius Iohannis Mandauile & hæred' ipſius Iohannis de prefata Robergia per præfatum Iohannem procreat', prefat' Matilda filiæ predict' Iohannis de prefatâ Robergia per præfatum Iohannem procreata ſorori & hæredi predicti Roberti diſcendere debet per formam donationis predict'. And yet in truth the land did not diſcend vnto her from Robert but becauſe ſhe could haue no other writ, it was adiudged to be good. In which caſe it is to be obſerued that albeit Robert being heire tooke an eſtate taile by purchaſe, and the daughter was no heire of his body at the time of the gift, yet ſhe recouered the land per formam doni, by the name of heire of the body of her father, which, notwithſtanding her brother was and he was capable at the time of the gift; and therefore when the gift was made ſhe tooke nothing, but in expectancie, when ſhe became heire per formam doni. But where a man by deede gaue lands to Emme late wife of Iohn Maſter, habendum & tenendum predict' Emme & hæredibus Iohannis Maſter de corpore eiuſdem Emme procreat'. In that caſe the ſonne and heire of Iohn Maſter begotten on the body of Emme tooke no eſtate with Emme in the lands becauſe he was named after the Habendum.

17.E.2.Taile 23. 2.E.3.1. 11.Taile 7.4.& 5.Th.& Mar. Dier 156. 12.H.4.1. 15.H.7.10.

5.H.4.3.

¶ Item ſi home ad iſſue fits, & deuie, & terre eſt done al fits, & a les heires de corps ſon pier engendres, ceo eſt bone taile, & vncore le pier fuit mort al temps de la done. Et mults autres eſtates en taile y ſont per le equitie del dit eſtatute que icy ne ſont ſpecifies.

ALſo if a man hath iſſue a ſonne and dieth, and land is giuen to the ſonne, and to the heires of the body of his father begotten, this is a good entaile, and yet the father was dead at the time of the gift. And there bee many other eſtates in the taile by the equity of the ſaid ſtatute, which bee not here ſpecified.

If a man hath iſſue two daughters, and dieth ſeiſed of two acres of land in Fee ſimple, and the one Copercener giueth her part to her ſiſter, and to the heires of the body of her father, In this caſe the Donee hath an eſtate taile in the moity of the Donors part, for the Donee is not entire heire but the Donor is heire with the Donee, and ſhee cannot giue to the heires of her owne body, and the Donee hath the other moity of her ſiſters part for life. If a man hath iſſue a ſonne and a daughter, and dieth, and land is giuen to the daughter and to the heires females of

of the body of the father, she taketh but an estate for life because she is not heire female to take by purchase as before hath beene said.

¶ *Et a les heires de corps le pier.* These words (les heires) are obseruable, for if they were (ses heires) it cleerely altereth the case. And therefore if lands be giuen to the sonne and to his heires of the body of his father, the sonne cannot take as heire of the body of his father, because the grant is to him and to his heires, &c. and consequently he hath a Fee simple. But if there be Grandfather, Father and Sonne, and the father dieth, and lands bee giuen to the Sonne, and to the heires of the body of the Grandfather, this is a good estate taile in the Sonne, so as Littleton did put his case of the Father but for an example

¶ *Et mults auters estates en le tayle y sont, &c.* This needeth no explanation.

Section 31.

¶ MEs si home done terres ou tenements a vn auter, a auer & tener a luy & a ses heires males, ou a ses heires females, il a que tiel done est fait ad fee simple, pur ceo que nest my limit per le done de quel corps lissue male ou female issera, & issint ne poit en ascun maner estre prise per lequitie del dit estatute & pur ceo il ad fee simple.

BVt if a man giue Lands or Tenements to another, To haue and to hold to him and to his heires males, or to his heires females, he to whom such a gift is made, hath a Fee simple, because it is not limited by the gift, of what bodie the issue male or female shall be, and so it cannot in any wise bee taken by the equitie of the said Statute, and therefore he hath a Fee simple.

¶ *Terres ou Tenements.* This rule extendeth but to Lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen haue in their Armories or Armes. For where the Nobleman or Gentleman hath a Fee simple in his Armories or Armes, yet is the same discendible to the heires males lineall or collaterall. For albeit a Female be heire at the Common Law, yet the Shield, Armories and Armes discend vnto them that are able to beare them (farre exceeding the nature of Gauelkind, but with seuerall differences.) And all the females of that Family in respect that they be of the same bloud, may in a lozenge or vnder a Curtaine manifest of what Family they bee by expressing the Armories and Armes belonging to that Family, and the husband of them may impale them or quarter them with their owne as the case shall require. And for distinction and better explanation hereof. If the King by his Letters Patents giueth lands or Tenements to a man, and to his heires males; the grant is void, for that the King is deceiued in his grant, in asmuch as there can be no such inheritance of Lands or Tenements as the King intended to grant. But if the King for reward of seruice granteth Armories or Armes to a man, and to his heires males without saying (of the bodie) this is good, and as hath beene said they shall discend accordingly. 18.H.8.tit.Patents. Br.104.

If a man by his last will deuise Lands or Tenements to a man and to his heires males, this by construction of Law is an Estate taile, the Law supplying these words (of his bodie.) Vide the Princes (t) Case where it appeareth that an Act of Parliament may limit an Inheritance of Lands or Tenements, otherwise then Common Law would doe, and create a new Estate of Inheritance, and many Authorities in Law there cited worthy of note and obseruation. Rot. Parliam. anno 1.E.4.nu.26. The (u) Duchie of Lancaster is intailed to King Edward the fourth and his heires Kings of England. And King Henrie the sixt did by his Letters Patents grant Iohanni filio Iohannis Talbot quod ipse & hæredes sui Domini manerij de Kingston Lisle in comitatu Berk. exnunc. Domini & Barones de Lisle Nobiles & Proceres regni habeantur, teneantur, & reputentur, &c. by this he had a Fee simple qualified in the Dignitie. 27.H.8.27.

(t) *Lib.8.fol.1. The Princes case.*
21.E.3.4.22.E.3.3.24.
E.3.53.9.H.6.25.9.E.4.15.
1.Marie. Dier.94.
(u) *Per literas patentes authoritate Parliamenti.*

2.H.5.fol.1. A grant was made to a man, and to his heires Tenants of the Manor of Dale. A man seised of Lands in Gauelkind, giue or deuise the same to a man and to his eldest heires, he cannot hereby alter the customarie Inheritance, but as in the case of our Ano-

Mich.26.& 27.Eliz.in Com. Banco. Leonard Lowlace case.

thor, Vt res magis valeat, the Law reiecteth (Males) so in this case the Law reiecteth this Adiectiue (eldest.) And so it is if Lands be giuen to a man, and to the eldest heires females of his bodie, yet all his Daughters shall inherit as it hath beene resolued.

¶ *Et issint ne poet este prise per lequitie del dit statute, &c.* For it is a certaine rule in law that in euery estate in taile within the said statute, it must be limited either by expresse words or by words equipollent of what bodie the heire inheritable shall issue. And it was (x) adiudged in Parliament, that where lands were giuen to a man, and to his heires males, that this was a Fee simple, and that as well the heires females as heires males should inherit, for the grant of a subiect shall be taken most strongly against himselfe.

(x) 18.Ass.p.5.18.E.3.46.6 9.H.6.23.25.lib.8.fol.1. The Princes case. Ancient temures fol.3.

¶ *Et pur ceo il ad Fee simple.* Littletons reason being shortly collected is this. Whosoeuer hath an Estate of inheritance, hath either a Fee simple or a Fee taile, but where lands be giuen to a man and his heires males, he hath no Estate taile, and therefore he hath a Fee simple.

What actions tenant in taile may haue and cannot haue, vide Sect.595. What great alterations haue beene made since Littleton wrote concerning not only Leases to bee made by tenant in taile, but barres also of the Estate taile it selfe by force of certaine Acts of Parliament made since Littletons time, you shall read Sect.56. and 708.

Chap. 3. Sect. 32.

Tenant in taile apres possibilitie dissue extinct.

¶ Littleton hauing spoken of Estates of Inheritance, viz. Fee simple and Fee taile, now he treateth of tenants of freehold tantum, that is, for terme of life, and therein first of Tenant in taile after possibilitie of issue extinct, and hee giueth vnto him the first place because this Tenant hath eight qualities and Priuiledges which tenant in taile himselfe hath, and which Lessee for life hath not. (a) As first he is dispunishable for waste. Secondly, Hee shall not be compelled to attorne. Thirdly, He shall not haue aide of him in the reuersion. Fourthly, Vpon his alienation, no writ of entrie in consimili casu, lieth. Fiftly, After his death no writ of intrusion doth lie. Sixtly, Hee may ioyne the mise in a writ of right, in a speciall manner. Seuenthly, In a Præcipe, brought by him hee shall not name himselfe tenant for life. Eightly, In a Præcipe brought against him hee shall not bee named barely tenant for life. And yet hee hath foure other qualities which are not agreeable to an

(a) Temps E.1.wast.125. 39.E.3.16. 31.E.3 aid 35.42.E.3.22. 43.E.3.1.45.E.3.22. 28.E.3.96.46.E.3.13.27. 2.H.4.17.7.H.4.10. 11.H.4.15.21.H.6.56. 10.H.6.1.26.H.6.aid 77. 3.E.4.11. 13.E.2. Entre Conge.56. Fitz.N.B.203. Lowes Bowles case lib.11.fo.8.

¶ Tenant en fee taile aps possibilitie dissue extinct est, lou teneñts sont doneś a vn home & a sa fēe en especiall taile, si lun de eux deuy sans issue, celuy q̄ survesquist est tenant en taile apres possibilitie dissue extinct. Et sils auoyent issue, & lun deuie, coment q̄ durant la vie, lissue celuy q̄ survesquist ne serra dit tenant en taile aps possibilitie dissue extinct, vncore si lissue deuy sans issue, issint que ne soit ascun issue en vie que poit enheriter p̄ force de le taile, donque celuy que survesquist

Tenant in Fee Taile after possibilitie, of issue extinct is, where Tenements are giuen to a man, and to his wife in especiall taile, if one of them die without issue, the suruiuor is tenant in taile after possibilitie of issue extinct, and if they haue issue, and the one die, albeit that during the life of the issue, the suruiuour shall not bee said tenant in taile after possibilitie of issue extinct, yet if the issue die without issue, so as there bee not any issue aliue which may inherit by force of the taile, then the suruiuing partie of the Donees

De les donees est tenant en le taile apres possibilitie dissue extinct.

nees is tenant in taile, after possibilitie of issue extinct.

Estate in taile, but to a bare Estate for life. (b) *First*, if he maketh a feoffment in fee, this is a forfeiture of his Estate. *Secondly*, If an Estate in fee, or in fee taile in reuersion, or remainder discend or come to this tenant, his Estate is determined, and the fee or fee taile executed. *Thirdly*, he in the reuersion or remainder shall be receiued vpon his default, as well as vpon bare tenant for life. *Fourthly*, an exchange betweene a bare tenant for life and him in fee, for their estates in respect of their quantitie are equall, so as the difference standeth in the qualitie, and not in the quantitie of the Estate. And as an Estate taile was originally caued out of a fee simple, so is the estate of this tenant out of an estate in especiall taile. And he is called tenant in taile after possibilitie of issue extinct, because by no possibilitie hee can haue any issue inheritable to the same Estate taile. But if a man giueth land to a man and his wife, and to the heires of their two bodies, and they liue till each of them be C. yeare old, and haue no issue, yet doe they continue tenant in taile for that the law seeth no impossibilitie of hauing children. But when a man and his wife bee tenant in especiall taile, and the wife dieth without issue, there the Law seeth an apparant impossibilitie, that any issue that the husband can haue by any other wife should inherit this estate. And let this tenant keepe his estate for he hath these priuiledges in respect of the priuity of his estate, and of the inheritance that was once in him. (c) For in the Case of Euens, Mich. 28. & 29. Eliz. it was adiudged that where tenant in taile after possibilitie of issue extinct granted ouer his estate to another, that his grantee was compelled to attorne in a quid iuris clamat, as a bare tenant for life, and so be named in the writ, for by the assignement the priuitie of the Estate being altered, the priuiledge was gone, and this iudgement was affirmed in a writ of Error, and herewith agreeth 27. H. 6. tit. aid. Statham 29. E. 3. 1. b.

(b) 13. E. Entre Cong. 56. 45. E. 3. 22. 28. E. 3. 96. 27. Ass. p. 60. F. N. B. 159. 32. E. 3. tit. ag. 55. 55. E. 3. 4. 9. E. 4. 17. 2. R. 2. reseit. 147. 41. E. 3. 12. 20. E. 3. reseit. 38. E. 3 33. Lewes Bowles case vbi supra.

(c) Lib. 11. fol. 83. Lewes Bowles case. 27. H. 6. tit aid. Statham. 29. E. 3 1. b.

27. H. 6. ib. aid. 29. E. 3. 1. b.

Section 33.

¶ Item si tenemẽts sont doneʒ a vn home & a ses heires que il engendʒa de corps la feme, en cest cas la feme nad ryen en les tenements, & le baron est seisie come donee en special taile. Et en ceo cas, si la feme deny sans issue de son corps engendʒes per son baron, donques le baron est tenant en taile apʒes possibilitie dissue extinct.

ALso if Tenements be giuen to a man and to his heires which hee shall beget on the bodie of his wife. In this case the wife hath nothing in the Tenements, & the husband is seised as Donee in especiall taile. And in this Case if the wife die without issue of her bodie begotten by her husband, then the husband is Tenant in Taile after possibiltie of issue extinct.

¶ *Si la feme deuie sans issue.* So as the estate of this tenancie must bee altered by the act of God, and that by dying without issue, for if a feoffment in fee be made to the vse of a man and his wife for tearme of their liues and after to the vse of their next issue male to bee begotten in taile, and after to the vse of the husband and wife, and of the heires of their two bodies begotten they hauing no issue male at that time; In this Case the husband and wife are tenants in especiall taile executed, and after they haue issue a sonne in this case, they are become tenants for life, the remainder to the sonne in taile, the remainder to them in speciall taile, for albeit their Estate taile is turned to an Estate for life, yet they haue but a bare Estate for life, but if the issue die, and the husband die hauing no other issue, and then the sonne die without issue, the wife shall haue the priuiledges belonging to a tenant in taile after possibilitie of issue extinct, as it appeareth in Lewes Bowles Case vbi supra. where it is said, that the state of this tenant must be created by the act of God, and not by limitation of the partie, ex dispositione Legis, and not ex prouisione hominis. (d) If land be giuen to a man and to his wife, and to the heires of their two bodies, and after they are diuorced causa Præcontractus or Consanguinitatis, or Affinitatis, their estate of inheritance is turned to a ioint Estate for life, and albeit they had once an inheritance in them, yet for that the Estate is altered by their owne act, and not by the act of God, viz. by the

Lewes Bowles vbi lib. 11. fo. 80

(d) 7. H. 4. 16. 8. E. 1. Ass. 415. 12. Ass. 22. 19. Ass. p. 2. 13. E. 3. Ass. 91. in fin.

the death of either partis without iſſue, they are not tenants in taile after poſſibilitieof iſſue extinct. Lands are giuen to the huſband and wife, and to the heires of the bodie of the huſband, the remainder to the huſband and wife, and to the heires of their two bodies begotten, the huſband die without iſſue, the wife ſhall not be tenant in taile after poſſibilitie, for the remainder in ſpecial taile was vtterly void, for that it could neuer take effect, for ſo long as the huſband ſhould haue iſſue, it ſhould inherit by force of the generall taile, and if the huſband die without iſſue, then the ſpecial Eſtate taile cannot take effect, in as much as the iſſue which ſhould inherit the eſpeciall, muſt be begotten by the huſband, and ſo the generall which is larger and greater, hath fruſtrated the eſpecial which is leſſer. And the wife in that Caſe ſhall bee puniſhed for waſte.

Section 34.

¶ If lands be giuen to a man with a woman in Frankmarriage, albeit the woman (which was the cauſe of the gift) dieth without iſſue, yet the Huſband ſhall bee tenant in taile, apres poſſibilitie, &c. for that hee and his wife were Donees in eſpecial taile, and ſo within the words of Littleton, the reſidue of this Section is euident.

¶ Et nota q̄ nul poit eſtre tenāt en le taile apꝛs poſſibility diſſue extinct, forſq̄ vn des donees, ou le donee en le ſpecial taile. Car l'donee en generall taile ne poit eſtr̄ vnq̄ dit tenāt en taile apꝛs poſſibility diſſue extinct, pur ceo q̄ tout tēps durant ſa vie, il poit per poſſibility auer iſſue que poit inheriter per force de meſme le taile. Et iſſint en ſi le mañ, iſſue q̄ eſt heire a les donees en vn eſpecial taile, ne poit eſtre dit tenāt ē taile apꝛs poſſibilitie diſſue extinct, cauſa qua ſupra.

And note that none can be tenant in taile after poſſibility of iſſue extinct, but one of the Donees, or Donee in eſpeciall taile. For the Donee in generall taile cannot be ſaid to bee tenant in taile after poſſibilitie of iſſue extinct, becauſe alwayes during his life, he may by poſſibilitie haue iſſue which may inherit by force of the ſame entaile. And ſo in the ſame manner the iſſue which is heire to the Donees in eſpeciall taile, cannot be tenant in taile after poſſibilitie of iſſue extinct, for the reaſon abouesaid.

* This and that which followe, is not in the firſt Edition (which I haue.) And therefore (that I may ſpeake it once for all) it was wrong to the Author to adde any thing, (eſpecially in one Content) to his worke.

* Et nota que tenant en taile apꝛes poſſibility diſſue extinct ne ſerra vnq̄ puny de waſt, pur lenheritance que fuit vn foits en luy, 10. *Hen.6.* 1. * Mes ceſtuy en le reuerſion poit enter ſi alien en fee, 45. E. 3. 22.

And note that tenant in taile after poſſibilitie of iſſue extinct ſhall not be puniſhed of waſte, for the inheritance that once was in him. 10. *H.6.* 1. But he in the reuerſion may enter if hee alien in fee, 45. *E.* 3. 22.

CHAP.

Chap. 4. *Sect.*35.

Curteſie Dengleterre.

Tenant p̄ la Curteſie Dēgleterre eſt, lou home pr̄ēt feme ſeiſie en fee ſimpl̄, ou en fee tail̄ general, ou ſeiſie come heire de le taile ſpecial, & ad iſſue per meſme la feme, male ou femal̄, oyes ou vife, ſoit liſſue apres mort ou en vie, ſi la feme deuie, le baron tiendra la terre durant ſa vie, per la ley Dangleterre. Et eſt appel tenant per le Curteſie Dengleterre, pur ceo que ceo eſt vſe en nul auter realme, forſq̄ tantſolement en Engleterre.

Et aſcuns ont dit, queil ne ſerra tenant p̄ le curteſie, ſinon q̄ lenfant quil ad p̄ la feme ſoit oye crie, car p̄ le crie eſt pue q̄ le enfant fuit nee vife: Ideo quære.

TEnant by the curteſie of England is where a man taketh a wife ſeiſed in fee ſimple, or in fee taile generall or ſeiſed as heire in taile eſpeciall and hath iſſue by the ſame wife, male or female borne aliue, albeit the iſſue after dieth or liueth, yet if the wife dies, the huſband ſhall hold the land during his life by the law of England. And he is called Tenant by the curteſie of England, becauſe this is vſed in no other realme but in England only.

And ſome haue ſaid, that he ſhall not be tenant by the curteſie, vnleſſe the childe which he hath by his wife be heard crie; for by the cry it is proued that the childe was borne aliue. Therfore Quere.

Priſt feme ſeiſie. And firſt of what ſeaſon a man ſhall be tenant by the curteſie. (e) There is in Law a two fold ſeiſin, viz. a ſeiſin in Deed, and a ſeiſin in Law, whereof more ſhalbe ſaid, Sect 468. & 681. And here Littleton intendeth a ſeiſin in Deed if it may be attained vnto. (f) As if a man dieth ſeiſed of lands in Fee ſimple or fee taile generall, and theſe lands diſcend to his daughter, and ſhe taketh a huſband and hath iſſue, and dyeth before any entry, the huſband ſhall not be tenant by the curteſie and yet in this caſe ſhee had a ſeiſin in Law, but if ſhe or her huſband had during her life entred, he ſhould haue beene tenant by the Curteſie. (g) A man ſeiſed of an Aduowſon or rent in fee hath iſſue a Daughter, who is married, and hath iſſue, and dieth ſeiſed, the wife before the rent became due, or the Church became voide, dieth ſhee had but a ſeiſin in Law, and yet hee ſhall bee tenant by the Curteſie, becauſe hee could by no induſtrie attaine to any other ſeiſin, Et impotentia excuſat legem. But a man ſhall not be tenant by the Curteſie of a bare right, title, vſe, or of a reuerſion or remainder expectant vpon any eſtate of free hold, vnleſſe the particular eſtate be determined or ended during the couerture.

(e) F.N.B.194.

(f) 1.Mar.Dwr.95.

(g) 7.E.3 66. 3.H.7.5.

At the Coronation of King R. 2. ſaith the Record, (h) Iohannes Rex Caſtiliæ & legionis Dux Lancaſtriæ, coram dicto domino rege & conſilio ſuo comparens clamauit vt comes Leiceſtriæ officium Seneſchalciæ Angliæ, & vt dux Lancaſtriæ ad gerendum principalem gladium domini Regis vocat' Curtana die coronationis eiuſdem regis, & vt comes Lincoln̄ ad ſcindendum & ſecandum coram ipſo domino Rege ſedente ad menſam dicto die coronationis, & quia fact' diligenti examinatione coram peritis de conſilio regis de premiſſis ſatis conſtabat eidem conſilio, quod ad ipſum ducem tanquam tenentem per legem Angliæ poſt mortem Blanchiæ quondam vxoris ſuæ pertinuit officia predict' prout ſuperius clamabat exercere, conſideratum fuit per ipſum regem & conſilium ſuum predictum, quod idem Dux officia predicta per ſe & ſufficientes deputatos ſuos faceret & exerceret, & feoda debita in hac parte obtineret. Qui quidem dux

(h) *Proceſſ. fact ad Coronationem R. 2. Anno Regni ſui primo rot. claus. m. 43.*

dux officium Seneschalciæ predict' personaliter adimpleuit, &c. And euery man that claymed to hold by graund Seriantie to doe any seruice to the King at his Coronation exhibited his petition to the said Duke as Steward of England, who vpon hearing the proofes either allowed or disallowed the same.

Pa. Parent. Anno 20. H. 6.

In Letters patents made by King H. 6. to Richard Earle of Salisbury you shall finde this clause, Quodque charissimus consanguineus noster Richardus nunc comes Sarum qui Aliciam filiam & hæredem Thomæ nuper comitis Sarum adhuc superstitem duxit in vxorem, & cum eadem Alicia prolem tempore mortis predictæ Thomæ habuit & habet superstitem de presenti, eoque prtextu idem Richardus nunc comes Sarum nomen, statum & honorem comitis Sarum, &c. habet, & pro tempore, vitæ suæ de jure prætextu premissorum habere debet. The name of the issue which the said Richard Earle of Salisbury had by the said Alice was Richard, who married with Anne the sister and heire of Henry Beauchamp Earle of Warwicke, who was Earle of Warwicke to him and to his heires, and Duke of Warwicke to him and to the heires males of his body. And Richard the sonne hauing then no issue by his wife, King H. 6. in 27. yeare of his raigne granted to him that he should be Earle of Warwicke Licet ipse & predicta Anna exitum inter eos ad præsens non habent. These and many more I haue read concerning this matter, and only say to the reader, Vtere tuo judicio, nihil enim impedio.

Rot. Patent. de anno 27. H. 6. m.

(i) Vid. 1. E. 3. 6. 5. E 3. 26.

(i) If an estate of freehold in Seignories, Rents, Commons, or such like be suspended, a man shall not be tenant by the curtesie, but if the suspension be but for yeares, he shall be tenant by the curtesie. As if a tenant make a Lease for life of the tenancie to the Seignorette, who taketh a husband, and hath issue, the wife dieth, he shall not be tenant by the curtesie, but if the Lease had beene made but for yeares he shall be tenant by the curtesie.

¶ *En Fee simple ou en Fee taile generall, ou seisie come heire de la taile speciall & adissue per la seme male ou female.* Secondly of what estate. If lands be giuen to a woman and to the heirs males of her body she taketh a husband and hath issue a daughter and dieth, he shal not be tenant by the curtesie, because the daughter by no possibilitie could inherite the mothers estate in the land, and therefore where Littleton saith, issue by his wife male or female, it is to be vnderstood, which by possibility may inherite as heire to her mother of such estate. Littleton himselfe explaneth this by expresse words Cap. Dower. fo. 10. Sect. 52. And therefore if a woman tenant in taile generall maketh a Feoffment in fee, and taketh backe an estate in fee, and take a husband and hath issue, and the wife dieth, the issue may in a Formedon recouer the land against his father, because he is to recouer by force of the estate taile as heire to his mother and is not inheritable to his father.

W. 2. ca. 1. Litt. cap Dower fo. 10. Sect. 52. Paines case 11. 8. fo. 34.

¶ *Et adissue.* 3. The time of hauing the issue. 4. What kinde of issue. If a man seised of Lands in fee hath issue a daughter, who taketh husband and hath issue, the father dieth, the husband enter, her (a) shalbe tenant by the curtesie, albeit the issue was had before the wife was seised. And so it is albeit the issue had died in the life time of her father before any discent of the land, yet shall he be tenant by the curtesie. If a woman (b) seised of lands in fee taketh husband, and by him is bigge with childe, and in her trauell dieth, and the childe is ripped out of her body aliue yet shall he not be tenant by the curtesie, because the childe was not borne during the marriage nor in the life-time of the wife, but in the meane time the land discended, and in pleading he must alledge, That he had issue during the marriage.

(a) Old tenures 21. H. 3. tit. Dower 198.

(b) Vid. Paines case vbi su. ra.

If the wife be (c) deliuered of a Monster which hath not the shape of mankinde, this is no issue in the Law, but although the issue hath some deformity in any part of his body, yet if he hath humane shape this sufficeth. Hij qui contra formam humani generis conuerso more procreantur (vt si mulier monstruosum vel prodigiosum fuerit enixa) inter liberos non computentur, partus tamen cui natura aliquantulum ampliauerit vel diminuerit non tamen superhabundauit, vt si sex digitos vel nisi quatuor habuerit benè debet inter liberos commemorari. Si inutilia natura reddidit membra, vt si curvus fuerit aut gibbosus vel membra tortuosa habuerit non tamen est partus monstruosus. Item puerorum alij sunt masculi alij feminæ alij hermophraditæ, hermophradita tam masculo quam feminæ comparatur secundum prævalescentiam sexus incalescentis.

(c) Bract. lib. 5. 437. 438. Britt. ca. 66. & ca. 83. Fleta lib. 1. ca. 5. & lib 6. ca. 54.

If the issue be borne deafe or dumbe or both, or be borne an Ideot, yet is it a lawfull issue to make the husband Tenant by the curtesie and to inherite the land.

(d) 28. H 8. 25. Dier. Paynes case vbi supra.

¶ *Oyes ou viue.* If it be borne aliue (d) it is sufficient though it be not heard crye; for peraduenture it may be borne dumbe. And this is resolued cleerely in Paines case Vbi supra. For the pleading (as hath beene said) is, That during the marriage he had issue by his wife, and vpon that point the triall is to be had, and vpon the euidence it must be proued, that the issue was aliue, for mortuus exitus, non est exitus, so as the crying is but a proofe that the childe was borne aliue, and so is motion stirring and the like. And it is said by an ancient Author (e) that it was ordeyned in the raigne of King H. 1. Quetouts que survequissent

(e) Mirror. cap. 1. §. 3.

ſent lour femes dount ils vſſent conceiue tenuiſſent les heritages lour fems pur lour vies.

By the cuſtome of Gauelkinde (f) a man may be Tenant by the curteſie without hauing of any iſſue.

(f) 9.E.3.38. 16.E.3. *aid.* 129. *Stat. de Conſuetudinibus Kancie.*

¶ *Soit leiſſue apres mort ou en vie.* And therefore (g) if a woman Tenant in taile generall taketh a huſband and hath iſſue, which iſſue dieth and the wife dieth without any other iſſue, yet the huſband ſhall be tenant by the curteſie albeit the eſtate in taile be determined, becauſe he was intitled to be tenant Per legem Angliæ before the eſtate in taile was ſpent and for that the land remaineth. But if a woman maketh a gift in taile and reſerue a Rent to her and to her heires, and the Donor taketh huſband and hath iſſue, and the Donee dieth without iſſue, the wife dieth, the huſband ſhall not be tenant by the curteſie of the Rent for that the rent newly reſerued is by the act of God determined and no ſtate thereof remaineth. But (h) if a man be ſeiſed of a Rent and maketh a gift in taile generall to a woman, ſhe taketh huſband and hath iſſue, the iſſue dieth, the wife dieth without iſſue, he ſhall be Tenant by the curteſie of the Rent, becauſe the rent remaineth. The diuerſitie appeareth.

(g) 21.H.3.tit.Dower 158. *Fayers caſe. Vbi ſupra.*

(h) *Brooke, tit. per le Curteſie* 86. 10.E.3.27.

¶ *Si la feme deuie le baron tiendra la terre, &c.* Foure things doe belong to an eſtate of Tenancy by the curteſie, viz. Marriage; Seiſin of the wife; Iſſue, and death of the wife. But it is not requiſite, that theſe ſhould concurre all together at one time: And therefore if a man taketh a woman ſeiſed of Lands in fee and is diſſeiſed, and then haue iſſue, and the wife die, he ſhall enter and hold by the curteſie. So if he hath iſſue which dieth before the diſcent as is aforeſaid.

And albeit the ſtate be not conſummate vntill the death of the wife, yet the ſtate hath ſuch a beginning after iſſue had in the life of the wife as is reſpected in law for diuers purpoſes.

First, after iſſue had, he ſhall doe homage alone, and is become tenant to the Lord, and the anowre ſhall be made only vpon the huſband in the life of the wife, as ſhall bee ſaid hereafter when we come to the apt place. Secondly, if after iſſue (i) the huſband maketh a Feoffment in fee, and the wife dieth, the Feoffee ſhall hold it during the life of the huſband, and the heire of the wife ſhall not during his life recouer it in Sur cui in vita; for it could not be a forfeiture, for that the eſtate, at the time of the feoffment, was an eſtate of Tenancie by the curteſie inuitiate and not conſummate. And it is adiudged in 29.E.3 that the tenant by the Curteſie cannot clayme by a Deuiſe, and waiue the ſtate of his tenancie by the Curteſie, becauſe ſaith the booke, the freehold commenced in him before the Deuiſe for terme of his life.

(i) 34.E.2. *Cui in vita* 13. 2.E.2. *Cui in vita* 26. 10.E.3.12. *Dier.* 21. *Eliz.* 363.

29.E.3.

¶ *Et eſt appel tenant per le curteſie dengliterre pur ceo que neſt vſe en auter realme forſque tant ſolement en Engliterre.*

¶ *Per le Curteſie.* In Latyn Per legem Angliæ.

¶ *Tant ſolement en Engleterre.* It is alſo vſed within the realme of Scotland, and there it is called Curialitas Scotiæ. And ſo it is in the Realme of Ireland.

¶ *Et aſcuns ount dit qui il ne ſerra tenant per le curteſie ſinon que lenfant que il ad per ſa feme ſoit oye crie, car per le crie eſt proue que le enfant fuit nee vife.* Our Author hauing deliuered his owne opinion before, viz. Oyes ou vife, now he ſheweth the opinions of others: for ſo it is ſaid in the (k) Statute De tenentibus per legem Angliæ: and of that opinion is Glanuile (l) lib.7.cap.8. Bracton lib.5. tract 5. cap.30. Britton cap.50. fo.132. Fleta lib.6.ca.50. &c. But the reaſon is againſt their opinion; For by the crye it is proued, &c. ſo as it is but an euidence to proue the life of the enfant.

(k) *Vet. mag. cat. part* 2. *fol.*70.

(l) *Glanuil. lib.*7. *cap.*8. *Bract. lib.*5. *tract* 5. *ca.*30. *Britt. ca.*50. *fo.*132. *Fleta. lib.*6. *cap.*54.

¶ *Aſcuns ont dit.* But theſe and the like ſpeeches our Author intendeth that the point had beene controuerted, but thereby except it be in this Section where formerly he deliuered his opinion as hath beene ſaid, hee tacitely inſinuateth his owne iudgement which in all the reſt holdeth for good Law and warranted by good Authority throughout his three bookes, which kinde of ſpeach and the like I haue collected together as it appeareth by the Sections in (l) the margent.

(l) *Sect.* 40. 319. 132. 136. 137. 138. 141. 145. 148. 156. 170. 179. 192. 202. 227. 234. 269. 336. 339. 357. 400. 435. 436. 440. 443. 460. 462. 478. 501. 503 506. 522. 523. 524. 534. 576. 601. 633. 634. 640. 642. 643. 644. 646. 658. 675. 689. 721. 723. 726. 730. 731. 733. 734.

¶ *Ideo quære.* This Quære is not in the originall edition of Littleton, and therefore to be reiected.

And ſome haue ſaid that in diuers caſes a man ſhall by hauing of iſſue be tenant by the Curteſie where a woman ſhall not be endowed. And therefore they ſay if lands bee giuen to two women and to the heires of their two bodyes begotten, and one of them take huſband and haue iſſue and die, the inheritances being ſeuerall the huſband ſhall be tenant by the Curteſie as it is adiudged 7.E.3. and in other bookes (m) this iudgement is cited and allowed. But certaine it is, That if land be giuen to two men and to the heires of their two bodyes begotten, and the one taketh wife and dieth, ſhe ſhall not be endowed for no eſtate in the land is altered by that marriage. But I leaue the reader to his owne opinion or rather to ſuſpend it vntill he come

7.E.3.6.

(m) 17.E.3.51.

to the proper place in the next Chapter. If lands holden of the King by Knights ſeruice in capite diſcend to a woman, and after office found ſhe intrude and taketh husband and hath iſſue, In this caſe the husband ſhall be tenant by the Curteſie; And yet if the heire Male after office in the like caſe intrudeth and taketh wife, his wife ſhall not be endowed, for ſo it is prouided by the ſtatute of Prerogatiua regis, cap. 13 that in that caſe there accrue to the heire no freehold nor Dower to the wife, which by interpretation is as much to ſay that the heire ſhall haue no freehold as to this reſpect to giue any dower to his wife. If a man marrie the niece of the King by licence and hath iſſue by her, and after lands diſcend to the niece and the husband enter, the neife dieth, he ſhall be tenant by the curteſie of this land, and the King vpon any office found ſhall not euict it from him, becauſe by the marriage, the niece was infranchiſed during the couerture. But if a free woman marrie the Villaine of the King by licence, and lands diſcend to the Villaine, the Villaine dieth, the wife ſhall not be endowed, but vpon an office found the King ſhall haue the land, for the Villaine remained ſtill a Villaine to the King. A woman (n) taketh husband, and hath iſſue, lands diſcend to the wife, the husband enters, and after the wife is found an Ideot by office, the lands ſhall be ſeiſed by the King, for the title of the tenancie by the curteſie, and of the King begin at one inſtant, and the title of the King ſhall be preferred. A man ſhall be tenant by the curteſie of a Caſtle (o) which ſerueth for the publike defence of the Realme, but a woman ſhall not be endowed thereof, as ſhall be ſaid more at large hereafter.

A man ſhall be tenant by the curteſie of a common ſauns nomber, but a woman ſhall not be endowed thereof, becauſe it cannot be deuided. A man ſhall be tenant by the curteſie (p) of a houſe that is Caput Baroniæ, or Comitatus: But it appeareth by 4. H. 7 Dower 180. that a woman ſhall not be endowed of it. For the Law reſpecteth Honour and Order. A man is entitled to be tenant by the curteſie, and maketh a feoffment in fee vpon condition, and entreth for the condition broken, and then his wife dieth, he ſhall not be tenant by the curteſie, becauſe albeit the ſtate giuen by the feoffement, be conditionall, yet his title to be tenant by the curteſie was inclusiuely abſolutely extinct by the feoffment, for the condition was not annexed to it. As if the Lord diſſeiſe the Tenant, and maketh a Feoffment in fee of the land vpon condition, and entreth for the condition broken, yet the Seigniorie is extinct for that was inclusiuely extinct by the feoffment. See more of Tenant by curteſie. Section 52.

Prerog. Regis ca. 13.

33. E. 3. tit. Trauers 36.

(n) *Pl. Com. Dame Halet Caſe. 263.*

(o) *Magna Carta. 30. E. 1. Dower 81. b. 17. H. 3. Dower. Bract. lib. 2. fol. 46. & 314.*

(p) *4 H. 3. Dower 180. Bract. fol. 93. Fleta lib. 5. ca. 23. 2. E. 2. Dower 123. 3. E. 3. Dower. B. 102. 9 H. 7. 1. 30. E. 3.*

Chap. 5. Sect. 36.

Dower.

Tenant *en dower*. Tenens in dote. Dos Dower in the Common Law (q) is taken for that Portion of Lands or Tenements which the wife hath for terme of her life of the Lands or Tenements of her husbands after his deceaſe for the ſuſtenance of her ſelfe, and the nurture and education of her children. Propter onus matrimonij & ad ſuſtentationem vxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur: & hoc proprie dicitur Dos mulieris ſecundum conſuetudinem Anglicanam. And Dos is derined ex donatione, & eſt

(q) *Lib. rub. ca. 70. Glanuil. lib. 6. cap. 1. Bract. lib. 2 fol. 92. Britton. cap. 101. Fleta lib. 5. cap. 23.*

Tenãt en Dower eſt lou hõe eſt ſeiſie de certaine terres on Tenements en fee ſimple, taile generall, ou come heire de le taile ſpeciall, & prent feme, & deuie, la feme apres le deceſſe de la baron ſerra endow de la tierce part de tiels terres & tenements que fueront a ſa Baron en aſcun temps du-

Tenant in Dower is where a man is ſeiſed of certaine Lands or Tenements in fee ſimple, fee taile generall, or as heire in ſpeciall taile, and taketh a wife, and dieth, the wife after the deceaſe of her husband ſhall bee endowed of the third part of ſuch Lands and tenements as were her husbands at any time during the couerture.

rant le couerture, a auer & tener a meſme la feme en ſeueraltie per metes & bounds pur terme de ſa vie, le quel el auoit iſſue per ſa baron ou ne-my, & de quel age que la feme ſoit, iſſint que el paſſe lage de neuf ans al temps de le mort ſa baron, car il couient que el ſoit paſſe lage de neuf ans al temps del mort ſa baron, ou auterment el ne ſerra my endow.

To haue and to hold to the ſame wife in ſeueraltie by metes and bounds for terme of her life, whether ſhee hath iſſue by her huſband or no, and of what age ſoeuer the wife be, ſo as ſhee bee paſt the age of nine yeeres at the time of the death of her huſband, for ſhe muſt bee aboue nine yeeres old, at the time of the deceaſe of her huſband otherwiſe ſhee ſhall not be endowed.

quaſi donarium, becauſe either the Law in ſeiſe doth (without any gift) or the husband himſelf giueth it to her as ſhall be ſaid hereafter. And at this day Dos or Dower is not taken by the profeſſors of the Common Law, either for the land which the wife bringeth with her in marriage to her husband, for then it is either called in Frankmarriage or in marriage as hath beene ſaid, nor for the portion of money or other goods or chatels, which ſhe bringeth with her in marriage, for that is called her marriage Portion. And yet of ancient time (r) Dos mulieris, the Dower or Dowrie of the woman was alſo applyed to them. But it is commonly taken for her third part which ſhe hath of her husbands lands or tenements.

(r) *Briton. ca.* 101. *Bracton. lib.* 2. *fol.* 92. *Glanvil. lib.* 6. *ca.* 1. *lib.* 7. *ca.* 1. *Lib.* 2. *fol.* 93. *Bingham's caſe.* 4. *H.* 3. *Dower* 179.

In Domeſday, Dos is called Maritagium.

To the conſummation of this Dower three things are neceſſarie. Viz. marriage, ſeiſen and the death of her husband.

Dos (f) the very name doth import a freedome, for the Law doth giue her therewith many freedomes: Secundum conſuetudinem regni mulieres viduæ &c. debent eſſe quietæ de tallegijs &c. And tenant in Dower ſhall not bee diſtreyned for the debt due to the King by the husband in his life time in the lands which ſhe held in Dower. And other priuiledges ſhe hath; Of all which Ockam yeelds the reaſon, Dotis eius parcatur quia præmium pudoris eſt.

(f) *Clauſ.* 11. *H.* 3. *m.* 17. *Regiſt.* 142. 143. *F.N.B.* 150. *Ockham. fol.* 40.

¶ *Lou home.* If the husband be an alien (t) the wife ſhall not be indowed. So if the husband be the Kings Villaine, the wife ſhall not bee endowed (as hath beene ſaid) but if the husband be a Villaine to a common perſon, the wife ſhall bee indowed if ſhe be intitled to Dower before the entrie of the Lord. And ſo if a free man take a niefe to wife and dieth ſhe ſhall be indowed. The wife of an Ideot, non Compos mentis, outlawed or attainted of Felonie or treſpaſſe, attainted of hereſie, præmunire or the like) ſhall bee indowed. But if the husband be attainted of treaſon, albeit it bee treaſon done after the title of Dower ſhe ſhall not be indowed as ſhall be ſaid hereafter.

(t) *Bract. fol.* 298. 19. *E.* 2. *Dower* 171. *Dame Hales caſe.* 13. *E.* 3. *Dower. Statham.* 13. *E.* 1. *tit. Dower.*

¶ *Seiſie.* Here this word (ſeiſed) extendeth it ſelfe aſwell to a ſeiſon in law, or a ciuill ſeiſon, as to a ſeiſon in deed, which is a naturall ſeiſon: but ſeiſed hee muſt be either the one way or the other during the couerture. For a woman ſhall bee indowed of a ſeiſon in law. As where lands or tenements diſcend to the husband, before entrie, he hath but a ſeiſon in Law, and yet the wife ſhall be endowed, albeit it bee not reduced to an actuall poſſeſſion, for it lieth not in the power of the wife to bring it to be an actuall ſeiſon, as the husband may doe of his wiues land, when he is to be tenant by curteſie, which is worthy the obſeruation. And yet of euery ſeiſon in Law, or actuall ſeiſon of lands or Tenements, a woman ſhall not be indowed. For example, If there be grandfather, father, and ſonne, and the grandfather is ſeiſed of three Acres of land in fee, and taketh wife and dieth, this land diſcendeth to the father, who dieth either before or after entrie, now is the wife of the father dowable. The father dieth and the wife of the grandfather is indowed of one acre and dieth, the wife of the father ſhall be endowed only of the two Acres reſidue, for the Dower of the grandmother is paramount, the title of the wife of the father, and the ſeaſon of the father which diſcended to him (be it in law or actuall) is defeated, and now vpon the matter the father had but a reuerſion expectant vpon a freehold, and in that caſe, Dos de dote peti non debet; although the wife of the grandfather dieth liuing the fathers wife. And here note a diuerſitie (w) betweene a Diſcent and a Purchaſe. For in the caſe aforeſaid, if the grandfather had infeoffed the father, or made a gift in taile vnto him, there in the caſe aboueſaid, the wife of the father, after the deceaſe of the grandfathers wife ſhould haue beene endowed of that part aſſigned to the grand-

(u) 43. *E.* 3. 32. 45. *E.* 3. 13. 9. *E.* 3. 4. *F.N.B.* 149. 8. *E.* 3. *tit. Aſſ.* 393. 19. *E.* 2. *Dower* 170. 23. *E.* 3. *Dower* 30.

(w) 5. *E.* 3. *tit. Voucher.* 249. *Paris caſe.* 9. *E.* 3. 4.

mother, and the reason of this diuersitie is, for that the reason that discended after the decease of the grandfather to the father is moued by the indowment of the grandmother whose title was consummate by the death of the grandfather. But in the case of the purchase or guift that toke effect in the life of the grandfather (before the title of Dower of the grandmother was consummate) is not defeated but only quoad the grandmother, and in that case there shall be Dos de dote. And yet there is another diuersitie (x) where the wife of the Father, is first indowed, and where the wife of the grandfather, for in the same case after the decease of the grandfather and father the sonne entreth and indoweth his mother of a third part, against whom the grandmother recouereth a third part and dieth, the mother shall enter againe into the land recouered by the grandmother, because she had in it an estate for terme of her life, and the estate for the life of the grandmother is lesser in the eye of Law, as to her then her owne life. Also the husband (y) may be seised in his Demesne, as of the fee absolutely, yet the woman shall not be indowed, as she shall not be indowed both of the land giuen in exchange, and of the land taken in exchange, and yet the husband was seised of both, but shee may haue her election to be endowed of which she will.

(x) 8.E.2.tit.Ass.393. 13.R.2.Dower.55. 22.E.3.5 8.E.3.3.7.H.6.4.

(y) 6.E.3.50. F.N.B.149.

Also of a seison for an instant a woman shall not be indowed. As if Cesty que vse (z) after the Statute of 1.R.3. and before the Statute of 27.H.8. had made a feoffment in fee, his wife should not be indowed.

(z) 27.H.8.23. F.N.B. 17.H.3. Dow 192.

Likewise if two toynt tenants be in fee, and the one maketh a feoffement in fee, his wife shall not bee indowed. And so if the Conusee of a fine doth grant and render the land to the Conusor, the wife of the Conusee shall not be indowed; for it is not possible that the husband could haue indowed his wife of such an estate as the vsuall pleading is, Lib intrat 225. Quia dicit quod W. quondam vir suus nunquam fuit seisitus de tenementis prædictis de tali statu ita quod eandem A. inde dotasse potuit.

Vid. Sect. 242.

¶ *Des terres ou tenements.* Of a Castle that is maintained for the necessarie defence of the Realme, a woman shall not be endowed, because it ought not to be diuided, and the publique shall be preferred before the priuate. But of a Castle that is only maintained for the priuate vse and habitation of the owner, a woman shall bee endowed. And so it was adiudged in the Court of (a) Common Pleas, where in a writ of Dower, the demand was, De tertia parte Castri de Hilderker in Comitatu Northampt: And the Statute of Magna Charta cap.7. whereby it is prouided, nisi domus illa sit Castrum, is to be vnderstood, a Castle maintained for the necessarie and publique defence of the Realme. And this agreeth with antient Records, (b) (albeit in the argument of the said case they were not vouched) the effect whereof be, Non debent mulieribus assignari in dotem castra quæ fuerunt virorum, suorum & quæ de guerra existunt vel etiam homagia & seruicia aliquorum de guerra existent. Wherein it is to be obserued, That the Law is not satisfied with the names of things, or nominatiues, but with things reall and substantiall. But of the principall Mansion, or capitall Messuage, the wife shall be endowed, (c) si non sit caput Comitatus, siue Baroniæ, for the honour of the Realme, or (as hath beene said) a Castle for the publique defence of the Realme. And so are the old bookes to be intended, as it was resolued Tr' 17.Eliz. in the Court of Common pleas, which I heard and obserued. And of an estate taile in lands determined, a woman shall be endowed in the like manner and forme as a man shall bee Tenant by the Curtesie Mutatis mutandis.

(a) Pasc.23.Eliz. in Com. Banco. Brasl. fol.96. Ent.ca. 103. Flet.li.5.c.23. 30.E.1.tit.Dower 81.b. 30.E.1.Touch.298. 17.H.3.192.8.Hen.3.Dower 196. 8.H.3.ib.194.

(b) Pas.1.E.1.part.1.m.17. Esch.4.E.1.m.88.

(c) Brasl.l.2.f.93. Brit.c.103. Fleta lib.5 ca.22. Trin.17.El.in Com.Banco.

¶ *En fee simple, fee taile general, &c.* If a man be Tenant in fee taile generall, (d) and make a feoffement in fee, and taketh backe an estate to him and to his wife, and to the heires of their two bodies, and they haue issue, and the wife dieth, the husband taketh another wife, and dieth, the wife shall not be endowed, for during the couerture, hee was seised of an estate taile generall, and yet the issue which the second wife may haue, by possibilitie may inherit.

(d) 41.E.3.30. 44.E.3.26. 30.H.8.Dyer 41.

The same Law it is, if in this case he had taken backe an estate in fee simple, and after had taken wife and had issue by her; yet she shall not bee endowed, for that the fee simple is vanished by the remitter, and her issue hath the land by force of the entaile. But in that case the Tenant cannot plead, that the husband was neuer seised of such an estate whereof the demandant might be endowed, but he must plead the speciall matter.

30.H.8.Dyer 41.

¶ *Et prent feme.* If a man so seised as is aforesaid, taketh an Alien to wife, and dieth, she shall not be endowed: but if the King take an alien borne, & dieth, she shall be endowed by the law of the Crowne. And Edmond the brother of King Edward the first, married the Queene of Nauarre, and died, and it was resolued (c) by all the Iudges, that she should be endowed of the third part of all the lands whereof her husband was seised in fee.

(c) Rot.Parl.26.E.1.m.1.

If a Iew borne in England taketh to wife a Iew borne also in England; the husband is conuerted to the Christian Faith, purchaseth lands, and infeoffeth another, and dieth, the wife brought

brought a writ of Dower, and was barred of her dower, and the reason yelded in the record (f) is this, Quia verò contra justiciam est, quod ipsa dotem petat vel habeat de Tenemento quod fuit viri sui ex quo in conversione sua noluit cum eo adherere & cum eo convers.

(f) *Dier. eleuc.* 18. *H.* 3. *nu.* 17

¶ *De la tierce part de tiels Terres & Tenements per severaltie per metes & bonds.* Albeit of many Inheritances that bee entire, whereof no diuision can be made by metes and bonds, a woman cannot be endowed of the thing it selfe, yet a woman (g) shall be endowed thereof in a speciall and certaine manner. As of a Mill a woman shall not be endowed by Mets and Bounds, nor in common with the heire; but either she may be endowed of the third toule dish, or de integro molendino per quemlibet 3. mensem. And so of a Milleine, (h) either the third dayes worke, or euerie third weeke or moneth. A woman shall be endowed of the third part of the profit of Dtallage, of the third part of the profits of a faire, of the third part of the profits of the office of the Marshalsie, of the (i) third part of the profits of the keeping of a Parke. Of the third part of the profit of a Dous house; and likewise of the third part of a Piscarie, (k) viz. tertium piscem, vel iactum retis tertium. Of the third presentation to an aduowson. A writ of Dower lieth de 3. parte exituum prouenientium de custodia gaolæ Abbathiæ Westm. And herewith agreeth reuerend antiquitie, De (l) nullo quod est sua natura indiuisibile, & secationem, siue diuisionem non patitur nullam partem habebit, sed satisfaciat ei ad valentiam. Of the third part of profits of Courts, (m) fines, heriots, &c. Also a woman shall be endowed of tithes. And the surest endowment of tithes, is of the third sheafe, for what land shall be sowne is vncertaine.

(g) *Bract. lib. 2. fol. 97. b. 23. H. 3. tit. ass. 415 F. N. B. 149. 45. E. 3. Dower 50.*

(h) *2. H 6. 11. Bract. lib 2. fol. 97. Brit. 247. 11. E. 3. tit. Dower 85. 15. E. 3. ibid. 81. 2. E. 3. 57 F N. B. 8. c.*

(i) *4. E. 2. T. 233. 26. E. 3 38 45. E. 3. Dower 50.*

(k) *Bract. 98. 208. Brit 247. Flet. lib. 5. cap. 23. 17. Ed. 2. Dower 104. 163. 19. Edw. 3. Quer. Imp. 154. 7. E. 3. 7.*

(l) *Bract. 97. Brit. 146. 147.*

(m) *Lib. Intr. Iudgme. 18. fo. 230. Lib. 11. fo. 25. 26. Harpers case.*

But in some cases of lands and tenements which are diuisible, and which the heire of the husband shall inherit, yet the wife shall not be indowed. As if the husband (n) maketh a lease for life of certaine lands, reseruing a rent to him and his heires, and he taketh wife and dieth, the wife shall not be endowed, neither of the reuersion (albeit it is within these words Tenements) because there was no seisin in deed or in law, of the freehold, nor of the rent, because the husband had but a particular state therein, and no fee simple. But if the husband maketh a lease for yeares, reseruing a rent, and taketh wife, the husband dieth, the wife shall bee endowed of the third part of the reuersion by metes and bonds, together with the third part of the rent, and execution shall not cease during the yeares. And herewith agreeth the common experience at this day. But if the husband maketh a gift in taile, reseruing a rent to him and to his heires, and after the donor taketh wife and dieth, the wife shall be indowed of this rent, because it is a rent in fee, and by possibilitie may continue for euer.

(n) *28. Ass 3. 8. R. 2. Dower 184. 1. E. 6 Dow. B. 89. acc.*

Vid. 1. E. 6. B. 89.

Of a Common certaine a woman shall be indowed, but of a Common sauns nomber en grosse she shall not be endowed, as hath beene said before. And so of a rent seruice, rent charge, and rent secke, she shall be endowed: but of an annuitie that chargeth onely the person, and issuet h not out of any lands or tenements, she shall not be endowed. But if the freehold of the rents common, &c. were suspended before the couerture, and so continue during the couerture, she shall not be endowed of them. If after the couerture the husband doth extinguish them by release or otherwise, yet she shall be endowed of them; for as to her dower they in the eye of the Law haue continuance.

Lib. 7. fo 38. Hillin: stones case. Lib. 6. fo. 78. Seig. abergaueny case.

If the wife be entituled to haue dower of three acres of marsh, euerie one of the value of twelue pence, the heire by his industrie and charge maketh it good Meadow, euerie acre of the value of ten shillings, the wife shall haue her dower according to the improued value, and not according to the value as it was in her husbands time: for her title is to the quantitie of the land, viz. one iust third part.

And the like law it is, if the heire improue the value of the land by building: And on the other side, if the value be impaired in the time of the heire, she shall be indowed according to the value at the time of the assignement, and not according to the value as it was in the time of her husband.

V. 30. E. 1. Vmb 298.

¶ *Ascuns temps durant le couerture.* For the better vnderstanding whereof it is to be knowne, that (as hath beene said) to dower three things doe belong, viz. marriage, seisin, and the death of the husband. Concerning the seisin, it is not necessarie that the same should continue during the couerture, for albeit the husband alieneth the lands or tenements, or extinguisheth the rents or commons, &c. yet the woman shall be endowed. But it is necessarie that the marriage doe continue during the couerture, for if that be dissolued, the dower ceaseth, vbi nullum matrimonium, ibi nulla dos. But this is to bee vnderstood when the husband and wife are diuorced à vinculo matrimonij, as in case of precontract consanguinitie, affinitie, &c. and not à mensa & thoro onely, as for adulterie. And yet it is said, that if the assignement of dower ad hostium eccl bee specified, viz. That notwithstanding any diuorce shall happen, yet that she shall hold it for her life, that this is good.

Bract. 92. Brit. cap. 101. Brit cap. eodem.

If the wife elope (o) from her husband, that is, if the wife leaue her husband, and goeth away and tarrieth with her adulterer, she shall lose her dower vntil her husband willingly without

(o) *W. 2 ca. 34. Lib. Intr. 224. Flet. lib. 5. ca. 22. Brit. c. 109. Mirror. cap. 5. §. 3.*

out coertion ecclesiasticall be reconciled vnto her, and permit her to cohabit with him; all which is comprehended shortly in two Hexameters, Sponte virum mulier fugiens, & adultera facta, dote sua careat, nisi sponsi sponte retracta. And (p) if she goeth willingly with or to the anowtrie, this is a departure and a tarrying, albeit she remaineth not continually with the anowtrer, or if she tarrieth with him against her will, or if he turne her away, or if she cohabit with her husband, by the censures of the Church, in all these cases she loseth her dowrie. But see notable matter hereof, in the exposition vpon the Statute of W.2.cap.34.

(p) 3.E.3.2.6.E.3.19. 9.E.3.29.19.E.3.Dower. 94.43.E.3.19. Vid.Fitz.N.B.150.b. 8.E.2.Dower 153.

¶ *En seueraltie per metes & bonds.* And yet in some cases where the husband was sole seised, the wife shal not be endowed in seueraltie by metes and bonds. As for example, (q) If a man seised of lands in fee, tooke a wife and infeoffed eight persons, a writ of Dower was brought against these eight persons, and two confesse the Action, and the other five plead in barre, and discend to them, the demandant shall haue iudgement to recouer the third part of two parts of the land, in eight parts to be diuided, and after the issue being found for the demandant against the five, the demandant shal haue iudgement to recouer against them the third part of five parts of the same lands, in eight parts to be diuided, which is worthie the obseruation. But of this more shall be afterwards said in this chapter.

(q) M.2.& 3.Eliz. Dier 187.b. 10.Ass.p.2. 17.E.3.4. Tr.10.H.5.Rot.447.

But regularly Littletons words are to be intended, where the husband was sole seised, for where he was seised in Common, there she cannot be endowed by metes and bonds, as it appeareth in this chapter, Sect.44. Nota, the endowment by metes and bonds, according to the common right, is more beneficiall to the wife, than to be endowed against common right, for there she shall hold the land charged, in respect of a charge made after her title of dower.

26.E.3.Dower 133 10.E.3.31. 17.E.2.Dower 164. 19.E.3 qua.Imp.154. 13.E.2.2. 18.H.6.27. per Paston.

¶ *Le quel el auoit issue per sa baron ou nemy.* Herein the tenant in Dower, as in many other, is preferred before the tenant by the Curtesie; But yet this great disaduantage the wife hath, that she cannot enter into her Dower by the Common Law, but is driuen to her writ of Dower to recouer the same, wherein sometimes great delayes are vsed, and therefore the well aduised friends of the wife will prouide for a ioynture to be made to her as shalbe said hereafter; For by the statute of (r) Magna carta cap.7. shee shall tarrie in the chiefe house of her husband but by the space of 40. dayes after the death of her husband, within which time dower shall be assigned vnto her, vnlesse it were formerly assigned, &c. but of little effect was that act, for that no penaltie was thereby prouided if it were not done: which terme of 40, dayes is in law called Quarentena. But if she marry within the 40 dayes she loseth her Quarenten. But some haue said that by the ancient Lawe of England the woman should continue a whole yeare in her husbands house within which time if Dower were not assigned, she might recouer it: and this certainly was the Law of England before the Conquest (s) Mulieres viduæ bis senos menses viduas exigunto, atque tum demum cui velint nubant, sin quæ ante annum nupserit dote mulctata fortunis omnibus à priore marito relictis priuatur. But for the relefe of the widow it was prouided by the Statute of Merton made in Anno 20.H.3.cap.1. (which by (t) Bracton is called Noua constitutio) that the wife shall recouer damages in her writ of Dower from the time of the death of her husband. But herein diuers things are obseruable. First in what kinde of writ of Dower she shall recouer her damages. In a writ for a Dower ad ostium Ecclesiæ, or ex assensu patris shs shall recouer no damages because she may enter, and the words of the Statute be Et dotes suas habere non possunt sine placito. Also I haue read in an ancient and learned reading vpon this Statute, that it extendeth only to a writ of Dower, Vnde nihil habet, and not to a writ of right of Dower, for in no writ of right damages are to be recouered. 2. She shal recouer damages only when her husband die seised, (that is) seised of the freehold & inheritance, (u) for albeit the husband before the title of Dower had made a Lease for yeares reseruing a Rent the wife shall recouer the third part of the reuersion with a third part of the rent and damages, for the words of the Statute be, De quibus viri sui obierunt seisiti. 3. Some say that the Demandant in a writ of Dower, that delayeth her seise shall not recouer damages, therefore let the Demandant take heed thereof. 4. It is necessary for the wife after the decease of her husband as soone as shee can to demand her Dower before good testimony, for otherwise she may by her owne default lose the value after the decease of her husband and her damages for detayning of her Dower. For if she bring a writ of Dower against the heire, and the heire commeth into the Court vpon the summons the first day, and pleade that he hath beene alwayes ready and yet is to render Dower, &c. If the wife haue not requested her Dower, shee shall lose the meane values and her damages, but if she hath requested her Dower shee may pleade it and issue may be thereupon taken.

(s) Lamb.sect.120.71.& diuers ancient Manuscripts, See the 2.part of the institutes cap.7. (t) Bract.lib.4.312. & lib.2.96. Britton cap.103. Flata lib.5.cap.23.

(u) Regist.Iudic.4. Origin.173. Dier 11.El.284. Rast.pl.fo.226.& c. 16.E.3. tit.Damages.83. 8.E.2.Ibid.11.

But it is holden in some bookes (w) that a request in Pays is not sufficient, and that it is the folly of the wife, that she brought not her writ of Dower sooner. But the Law and many (x) bookes be against it, and the words of the plea (that he hath beene alwayes ready, &c.) proue the same, and the words of the Statute also proue this, Et dotes suas habere non possunt sine placito.

(w) 5.E.3.2.41.E.2. Dower 46. and not in the bookes at large. (x) 16.E.3.Dower 53. 2.H.4.7.9.H.4.4.tit.issue 133.11.H.4.40. 13.E.4.7.14.H.8.25.b.

And

And the reason why tout temps prist is a good plea in a writ of Dower brought against the heire to barre her of the meane values and damages is, because the heire holdeth by title, and doth no wrong till a demand be made. But in a writ of Viell, Colinage, &c. where the land and damages are to be recouered, there such a plea is not good, for there the tenant of the land hath no title, but holdeth the land by wrong. And the Feoffee of the heire cannot at the first day plead Tout temps prist, because he had not the land all the time, since the death of the Ancestor. 5. It is to be obserued that the meane values and damages are to be recouered against the tenant in a writ of Dower, as it appeareth in a notable Record (y) betweene Belfield and Rowle, the Tenant as to parcell pleaded Non-tenure, and for the residue, Detynument of Charters, vpon which pleas they were at issue, and both issues found by the Jury against the Tenant, and found further that the husband died seised such a day and yeare, and had issue a sonne; and that the Demandant and the sonne by 6. yeares after the decease of the husband together tooke the profits of the land, and after the sonne such a day and yeare died without issue, after whose decease the land discended to the Tenaunt as vncle and heire to him, by force whereof hee entred and tooke the profits vntill the purchasing of the originall writ, and found the value of the land by the yeare, and assessed damages for the detayning of the Dower, and costs, and vpon this verdict, after ofte debating the demandant had iudgement to recouer her damages for all the time frō the death of her husband without any defalcation. In which case many things apparāt therein are obseruable. Let the Tenant therefore take heede how he plead false pleas. 6. That this Statute of Merton doth extend to Coppiholds (z) where the custome is that women be dowable. 7. That if the wife hath Dower assigned to her in Chauncery she shall haue no damages (a) for the words of the statute be Et viduæ per placitum recuperauerint, &c. So it is if the heire or his feoffee assigne Dower, and the wife accepteth it she loseth her damages.

(y) *Mich.*8.&9.E. rot.904. *in Communi banc.*

(z) *Tr.*37.*Eliz.lib.*4. *fo* 30.*b. Sherwes case.*
(a) 43.*Ass.pl.*32.

A man seised of lands in fee taketh a wife and granteth a rent charge and after maketh a Feoffment in fee, and taketh backe an estate tayle and dieth, the wife recouereth Dower against the issue in tayle by reddition, the wife maketh a surmise that her husband died seised, and prayeth a writ to enquire of the damages, and that is granted to her. In this case she hold the land charged with the rent charge, for by her prayer she accepteth her selfe dowable of the 2. estate, for of the first estate whereof shee was dowable her husband died not seised, and so shee hath concluded her selfe, wherefore if the rent charge be more to her detriment then the damages benefitall to her, it is good for her in that case to make no such prayer.

14.*H.*8.28.

¶ *De quel age que la fēe soit, issint que el passe lage de neufe ans al tēps del mort son barō.* Fēe, wife, here Lit. speaketh of a wife generally, & generally it is to be vnderstood aswel of a wife de facto as de jure. Therfore if the wife bee past the age of 9. yeres (b) at the time of the death of her husbād she shalbe endowed, of what age soeuer her husband be, albeit he were but 4 yeres old. Quia juñ non potest dotē præmef neq; victū sustiñ; nec obstabit mulieri petenti minor ætas, viz. wherein it is to be obserued, that albeit Consensus non concubitus facit matrimonium, and that a woman cannot consent before twelue, nor a man before foureteene, yet this inchoate and imperfect mariage (from the which either of the parties at the age of Consent may disagree) after the death of the husband shall giue Dower to the wife, and therefore it is accounted in law after the death of the husband legittimum matrimonium, a lawfull mariage, quoad dotem. If a man taketh a wife of the age of seuen yeares, and after alien his land, and after the alienation the wife attaineth to the age of 9. yeares, and after the husband dieth, the wife shall be indowed, for albeit she was not absolutely dowable at the time of the marriage yet she was conditionally dowable, viz. if she attained to the age of 9. yeares before the death of the husband, for so Littleton here saith, so that she passe the age of 9. yeares at the death of her husband, for by his death the possibilitie of Dower is consummate.

(b) 13.*E.*1.*Dower. Itin.North.* 8.*E.*2.*Dower.*122. 7.*E.*2.*Dower.*147. 12.*E.*2.*ibid.*159. 21.*E.*3.28. 13.*E.*3.*Dower.*67. 12.*R.*2.*Dower.*54. 12.*H.*4.3. 35.*H.*6.40. 7.*H.*5.11 12. 12.*H.*4. *Dodt.& Stud. Fitz N.B.*149.*b.* 22.*Eliz Dower* 369. *Bract. fol.*92. *Fleta lib.*5.*ca.*23. *Lib.Intrat.fo.*123.

And so it is if the husband alien his land and then the wife is attainted of felony now is she disabled, but if she be pardoned before the death of the husband she shal be indowed. If the sonne indow his wife at her age of seuen yeares ex assensu patris if she before the death of her husband attaine to the age of 9. yeares the Dower is good. But otherwise it is of an originall absolute disabilitie; as if a man take an Alien to wife, and after the husband alien the land, and after she is made Denizen, the husband dieth she shall not be indowed because her capacitie and possibility to be indowed came by the denization, otherwise it is if shee were naturalized by act of Parliament whereof see more in the chapter of Villinage.

And the Bishop vpon an issue ioyned in a writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certifie that they were coupled in lawfull mariage, albeit the man were vnder fourteene, or the wife aboue nine, and vnder twelue. So it is if a mariage de facto, be dowable by Diuorce, in respect of Consanguinitie, Affinitie, Precontract, or such like, whereby the marriage might haue bene dissolued, and the parties freed à vinculo matrimonij, yet if the husband die before any diuorce, then for that it cannot now be auoyded, this wife de facto shall bee endowed (c) for this is legitimum matrimonium (as in the other case when

(c) 10.*E.*3.35. *Fleta.lib.*5.*ca.*23. *Brit.cap.*107.

(d) *Bract. lib.4. fol.304. Britton. ibidem. Fleta lib.5. cap.23. 32.E.1. Dier 156.*

(e) *Trin. 14. Rot 3815. in Communi Banco. Inter Stowell & Wikes in Dower.*

(f) *50.E.15.b.*

(g) *W.2. cap.34.*

(h) *Britton. cap.106. Bracton. lib.4. fol.301.*

(i) *31.E.3. tit. collusion 29.*

(k) *Bract. lib.2. cap.39. fol. 92. &c. Fleta. lib.5. cap.22. Britton cap.101.*

(l) *Glanvil. lib.6. cap.1. Bracton. vbi supra. Britton. vbi supra. Fleta vbi supra. Mirror. cap.1. §.3. Magna Carta cap.7.*

Fitz. N.B.150.a.

(m) *21.E.4.53.94. 7.H.6.26. 22.H.6.14. 21.H.7.17. 40.Ass.27.41. 16.E.2. prescription 53. 43.E.3.32.45. Ass.8. Dier.363. 39.E.3.2.10. 34.E.3. Barr. 277. 13.E.3.tit. Dower.65.*

(n) *Vide le statute de consuetud. Kancia, &c. Trin.17.E.3. coram Rege Kan. in Thesaur. in which record Senescia signifieth Widdihood.*

(d) Bract. lib. 4. fol. 304. Britton. ibidem. Fleta lib. 5. cap. 23. 32. E. 1. Dier 156.

(e) Trin. 14. Rot 3815. in Communi Banco. Inter Stowell & Wikes in Dower.

(f) 50. E. 15 b.

(g) W. 2. cap. 34.

(h) Britton. cap. 106. Bracton. lib. 4. fol. 301.

(i) 31. E. 3. tit. collusion 29.

(k) Bract. lib. 2. cap. 39. fol. 92. &c. Fleta. lib. 5. cap. 22. Britton cap. 101.

(l) Glanvil. lib. 6. cap. 1. Bracton. vbi supra. Britton. vbi supra. Fleta vbi supra. Mirror. cap. 1. §. 3. Magna Carta cap. 7.

Fitz. N.B. 150. a.

(m) 21. E. 4. 53. 94. 7. H. 6. 26. 22. H. 6. 14. 21. H. 7. 17. 40. Ass. 27. 41. 16. E. 2. prescription 53. 43. E. 3. 32. 45. Ass. 8. Dier. 363. 39. E. 3. 2. 10. 34. E. 3. Barr. 277. 13. E. 3. tit. Dower. 65.

(n) Vide le statute de consuetud. Kancia, &c. Trin. 17. E. 3. coram Rege Kan. in Thesaur. in which record Senescia signifieth Widdihood.

(whenthe wife is infra annos nubiles) quoad dotē. And so in a writ of dower the Bishop ought to certifie, that they were legitimo matrimonio copulati, according to the words of the writ. And herewith agreeth 10.E.3.15. And (d) Bracton: quamdiu durauit matrimonium, durauit dotis exactio, ea deficiente deficit dotis petitio, &c. poterit tamen replicare contra exceptionem illam, quod si aliquando fuit matrimonium propter Consanguinitatem, &c. inter eos accusatum nūquam tamen fuit in vita viri sui solutum nec diuortium celebratum. But if they were diuorced à vinculo matrimonij in the life of her husband she loseth her Dower: Otherwise it is if they were diuorced (e) Causa adulterij, which is but à mensa & thoro, and not à vinculo matrimonij, as it was adiudged. But some doe hold that a wife de facto shall not haue an appeale of the death of her husband, but only she that is a wife, De iure in fauorem vitæ. Vide 50. E.3. fol. 15. 28. E.3.92.27 Ass. Stanford Pl. Cor. 59. and that there vnques accouple in loyall matrimonie shall be taken de iure strictly. And so in some case a wife shall haue Dower where she cannot haue an appeale, (f) and in other Cases she shall haue an appeale, where she cannot haue a writ of Dower, as if she elope &c. she is barred of her Dower, but not of her appeale: and the reason is for that the Statute (g) barreth her of her Dower, but not of her appeale. So if the husband be attainted of treason, &c. his wife shall not bee endowed, and yet if any doe kill him, the wife shall haue an appeale, the reason of the diuersitie shall appeare hereafter in this Chapter.

¶ *Apres le mort le Baron.* (h) mortuo viro hinc confirmatur Dos. This is intended of a naturall, not of a ciuill death. For if the husband entred in religion, (i) the wife shall not be endowed vntill he be naturally dead.

And in this Chapter Littleton deuideth Dower into fiue parts, viz. Dower by the Common Law. Secondly, Dower by the Custome. Thirdly, Dower ad ostium Ecclesiæ. Fourthly, Dower ex assensu patris. And fiftly, Dower De la pluis beale. And all these Dowers were instituted for a competent liuelihood for the wife during her life. (k) Propter onus matrimonij & ad sustentationem vxoris & educationem liberorum cum fuerint procreati si vir præmoriatur.

Section 37.

¶ *Nota per le common ley la feme nauera pur sa dower forsque* (l) *la tierce part, &c.*

¶ Et nota, que per le common ley la feme nauera pur sa Dower forque la tierre part des tenements que fueront a sa Baron durant le Espousels, mes per custome dascun pais el auera le moitie, & per le custome en ascun Ville & Burgh, el auera lentiertie. Et en touts tiels cases, el serra dit tenāt en Dower.

And note, that by the common law, the wife shall haue for her Dower, but the third part of the Tenements which were her husbands during the Espousals, but by the custome of some countie shee shall haue the halfe, and by the custome in some Towne or Borough, shee shall haue the whole. And in all these Cases shee shall be called Tenant in Dower.

This third part is called rationabilis dos, or Dos legitima, because it is the Dower that the Common Law giueth rationabilis autem Dos est cuiuslibet mulieris de quocunque tenemento tertia pars omnium terrarum, & tenemētorum quæ vir suus tenuit in dominico suo vt de feodo, &c.

¶ *Mes per Custome dascun pais el auera le moitie, & per le custome en ascun Ville & Burgh el auera lentiertie.* Such a (m) custome may extend to a County, City, or an ancient Burgh without question, and so this custome as here it appeareth by Littleton, may extend to vpland Townes, which are neither, Counties, Cities, nor Boroughes. But the surer pleading in this and the like Cases, is to lay the custome within a Mannor or Seignorie if the truth of the case will so beare it. By the custome of Gauelkind (n) the wife shall be indowed of the moitie, so long as she keepe herselfe sole, and without child, which she cannot waine and take her thirds for her life. For in that case, Consuetudo tollit communem legem.

And as custome may enlarge, so may custome abridge Dower, and restraine it to a fourth part, &c.

Section 38.

This shall be explained by that which shall be said in the two Sections next ensuing.

¶ Auxy sont deux auters manners de dower, cestascauoir, dower que est appelle dowment ad ostium Ecclesiæ, & dower appelle dowment ex assensu patris.

ALso there bee two other kinds of Dower, *viz.* Dower which is called Dowment at the Church doore, and Dower called Dowment by the fathers assent.

Section 39.

¶ DOwment ad ostium Ecclesiæ, est lou home de pleine age seisi en fee simple que serra espouse a vn feme, quãt il vient al huis del monastery ou desglise destre espouse, & la apres affiance enter eux fait. il endowe la feme de sa entier terre, ou de la moitie, ou dautre meindre parcel & la ouertment declare le quãtitie & la certainty de la terre que el auera pur sa dower, in ceo case la feme, apres le mort le baron, poit enter en le dit quantitie de terre dont le baron luy endowa, sans auter assignement de nulluy.

DOwment at the Church doore, is where a man of full age seised in Fee simple, who shall be married to a woman, and when he commeth to the Church doore to be married, there, after affiance & troth plight betweene them, he endoweth the woman of his whole land or of the halfe or other lesser part thereof, and there openly doth declare the quantitie and the certaintie of the land which shee shall haue for her Dower. In this case the wife after the death of the husband, may enter into the said quantitie of land of which her husband endowed her, without other assignement of any.

¶ If this dower bee made ad ostium castri siue mesuagij it is not good, but ought to be made, ad ostium Ecclesiæ siue Monasterij.

Et sciendum est (o) quod hæc constitutio fieri debet in facie Ecclesiæ, & ad ostium Ecclesiæ, non enim valet facta in lecto mortali, vel in camera, vel alibi vbi clandestina fuere coniugia. For the law requite that this and like matters bee done publikely and solemnely.

10.H.3.Dower.200.

(o) Bracton.lib.2.cap.18. Mirror.cap.1.§.3.& cap 5. 10.H.3. Dower 201. F.N.B.150.m.n. Fleta. lib.5.cap.22.&c. Britton.cap.101.108.&c.

¶ *Ou home de pleine age.* That is of one and twentie yeares. Anno 9. H 3. Dower 197. A man of the age of eighteene yeeres tooke a wife, and by assent of his garden endowed her, ad ostium Ecclesiæ, and it was adiudged a good endowment, albeit, the husband died before the age of one and twentie yeares; but I hold Littletons opinion to be good Law.

9.H.3.Dower. 197.

¶ *La apres affiance enter eux.* Affidare est fidem dare. Affiance or sponsalitie, and is derived of this word spondeo, because they contract themselues together, & ideo sponsalia dicuntur (p) futurarum nuptiarum conuentio, & repromissio. But this Dower is euer after marriage solemnized, and therefore this Dower is good without deed, because he cannot make a Deed to his wife. For no assignement of dower ad ostium Ecclesiæ, can be made before marriage, for that before marriage the woman is not intitled to haue dower.

(p) Glanvill lib 6. cap. 1. 40.E.3.43. Vide Vernon. case. lib.4.fo.1.2

¶ *De sa entier terre ou de le moitie.* In ancient time (q) as it appea-

(q) Glanvill.lib.6.cap.1. Bract.lib.2.cap.38.39.& lib.4.tract.6.cap.1.&6. Britton cap.101.&c. Fleta lib.5.cap.22.&c.

appeareth by Glanuill, lib. 6. cap. 1. It was taken that a man could not haue endowed his wife ad ostium Ecclesiæ, of a more then a third part, but of lesse he might. But at this day (r) the Law is taken as Littleton here holdeth. An assignement of dower (s) where the husband was sole seised, cannot bee made of the third or fourth part in common, but ought to be in seueraltie.

(r) F.N.B. 150.
(s) 20.E.3. Barre 132. 45.E.3.6. Fleta. lib.5.23.

¶ *Et la ouertment* (t) *declare le quantitie & certeintie del terre.* Here be two things that the Law doth delight in, viz. first, to haue this and the like openly and solemnely done. Secondly, to haue certaintie, which is the mother of quiet and repose. And this word (mottie) aboue said is to be entended of the halfe in certaintie, and not of the mottie in Common, which cleerely (u) appeareth in that here Littleton saith, the quantitie and certaintie of the land.

(t) Britton. cap. 101. Bracton. lib. 2. cap. 18.

(u) Vide 14.H.3. Dower 189 9.H.3. Dower 190. 8.H.3. Dower 195. F.N.B. 150. 40.E.3.43.

¶ *En ceo case la feme poet enter en le dit quantitie del terre.* And afterward, Sectione 43. he saith, Nota, que en touts cases lou le certaintie appeirt queux terres ou tenements feme auera pur sa dower la fem poet enter apres la mort son Baron. It was instituted in fauour and relefe of wiues, that a man after marriage might assigne to his wife certaintie of Dower, to the end that the widow should not bee driuen to a long and chargeable suit wherein delay might be vsed, and in the meane time her life spent, together with her money also. For albeit the (w) law hath prouided, Quod vidua post mortem mariti sui non detaliquid pro dote sua & maneat in capitali messuagio mariti sui per quadraginta dies post obitum mariti sui infra quos dies assignetur ei dos sua, nisi prius ei assignata fuerit, &c & habeat rationabile estouerium suum interim in Communi, yet because there was no penaltie or punishment inflicted, the tenant of the land may driue her to sue for her Dower. And this continuance of the widow in the capitall Messuage is in Law called a Quarentine, Quarentina, for that it is by the space of fortie dayes, as is aforesaid. And if the heire or other tenant of the land put her out, she may haue her writ, De quarentina habenda. If the wife marrie within the fortie dayes she loseth her Quarentine for her habitation in the house is personall to her, and only giuen to her in iudgement of Law during her widowhood, albeit the words of the Law be generall. And therefore to the end that Widowes might haue certaintie of estate, and that they might enter and not be driuen to suit, the Law hath prouided Dower ad ostium Ecclesiæ, as is shall appeare hereafter, Dower ex assensu patris, And lastly, by making of a ioynture, of which (being no Dower but made in satisfaction of Dower either before or after Marriage) it is necessarie that some thing should be said hereafter in his apt place, for that this now falleth out to be the surest way.

(w) Magna Carta cap. 7. See the second part of the Institutes, cap. 7. Fleta lib. 5. cap. 23. Britton. cap. 103. Bract. lib. 2. cap. 40. Regist. 175. Vide Dier 6.E.6.76.b. & 161. a. F.N.B. 161. 1. Marie. Br. 101.

Nota. surest way.

¶ *En touts cases quant le certeintie appeirt &c. la feme poet enter apres le mort del Baron.* This is to be intended where the certaintie appeareth vpon an assignement of dower, ad ostium Ecclesiæ, or ex assensu patris For if a woman bring a writ of dower of six pound rent charge, & she hath iudgement to recouer the third part, albeit it be certain that she shal haue fortie shillings, yet she cannot (x) distreine for 40. shillings before the Sheriffe doe deliuer the same vnto her: for whersoeuer the writ demand land, rent, or other things in certaine, the demandant after iudgement may enter or distreine before any seasen deliuered to him by the Sheriffe vpon a writ of habere facias seisinam. But in Dower where the writ demandeth nothing in certaine, there the demandant after the iudgement cannot enter or distreine vntill execution sued, by which execution the Sheriffe is by the Kings writ to deliuer the third part in certaintie to the demandant. And so it is when the wife of one tenant in common demand a third part of a mottie, yet after iudgement she cannot enter vntil the Sheriffe deliuer to her the third part, albeit the deliuerie of the Sheriffe shall reduce it to no more certaintie then it was.

(x) 45.E.3.26. 48.E.3 36. 22. Ass 87. 39.E.3.12. 37.H.6.38. 39.H.6.25. 1.8.5.8. Brev 199. 30.E.3.30. 21.E.4.3. Vide lib. 1. Sheeleys case. 40.E.3.22.

¶ *Sans auter assignement de nulluy.* For as concerning Dower at the Common law, there must be assignement either by the Sheriffe (as hath beene said) by the Kings writ, or else by the heire or other tenant of the land by consent and agreement betweene them To a perfect assignement of Dower eight things are to be obserued: (a) First regularly the assignement must be certaine, as our Author here saith.

(a) 8.E.2. Ent. 75. 40.E.3.23 45.E.3 5,6.

Secondly, It (b) must be either of some part of the land whereof she is dowable, or of a rent or some other profit issuing out of the same, either before iudgement or after, which Rent may be assigned to her by parol. But an assignement of other land whereof she is not dowable, or of a rent issuing out of the same, is no barre of her dower.

(b) 1. Mar. Dier 91. 1.E.2. Dower 146. 28.H.6.2. Dier 9.El 263. 26. Ass. 41. 31.E.3. Scir. fa. 99. 33.H.6.2 Vernons case, li.4.f.1. 5.E.4.22.

Thirdly, The assignement must be absolute, and not conditionall, or subiect to any limitation.

Fourthly, It must be made by him that is Tenant of the land; but herein certaine diuersities are to be obserued.

(c) 7.H.6.34. 10.E.2. Dower 169. 10.E.3.38.

If two or more be Ioyntenants of lands, (c) the one of them may assigne Dower to the wife,

wife of a third part in Certaintie, and this shall binde his companions, because they were compellable to doe the same by Law. But if one of them assigne a rent out of the land to the wife, this shall not binde his companion, because hee was not compellable by the Law thereunto. If the husband make seuerall Feoffments of seuerall parcels, and dieth and the one Feoffee assigne Dower to the wife of parcell of land in satisfaction of all the Dower which shee ought to haue in the land of the other feoffees, the other feoffees shall take no benefit of this assignement, because they are strangers thereunto, and cannot pleade the same. But in that case if the husband dieth seised of other lands in fee simple and the same discend to his heire, and the heire indoweth the wife of certaine of those lands in full satisfaction of all the Dower that shee ought to haue aswell in the lands of the feoffees as in his owne lands, this assignement is good, and the seuerall feoffees shall take aduantage of it. And therefore if the wife bring a writ of Dower against any of them, they may vouch the heire, and hee may pleade the assignement which he himself hath made in safetie of himselfe, least they should recouer in value against him, (d) so as there is a priuity in this respect betweene the heire and the feoffees, and by this meanes the same may be pleaded by the heire that made it. And so it is adiudged in our bookes, which is a notable case for many purposes.

(d) 33.E.3.Tit.Iudgem.154. 8.E.3.69. 17.E.3.58.b. 3.E.3 tit.Dower 76. 3.E.3.Vouch.196. See the second part of the Instit. W.1. cap.49.

Fiftly, If assignement be made (e) by any disseisor, abator, intruder, or any wrong doer, of lands or tenements, if they came to that estate by collusion and couin betweene the widdow and them, albeit the widdow hath iust cause of action and the assignement bee indifferently made after iudgement by the Sherife of an equall third part, yet shall the Disseisee, &c. auoyd it, for couin in this case shall suffocate the right that appertained to her, & so the wrongfull manner shal auoyd the matter that is lawfull.

(e) 25.Ass.p.1. 44.Ass.29. 44.E.3.46. 27.Ass.74. 11.H.4.60. 15.E.4.4. 19.H.8.12. Lit.83.151.

Sixtly, An assignement by (f) a disseisor, abator, intruder, &c. if there be no couin, is good, vnlesse it be preiudiciall to the disseisee, &c. As if the husband (g) infeoffeth the younger sonne with warrantie, the eldest sonne disseise the youngest sonne, and endow the widdow, in this case the younger sonne shall auoyd this assignement, for otherwise he shall lose his warrantie: but a disseisor, abator, intruder, &c. cannot assigne a rent out of the land to her for her dower, to bind the disseisee, &c.

(f) 12.Ass.p.20.21.E.3.12.
(g) 3.E.3.tit.Dower 77. 16.E.2.tit.Dower Statham.

Seuenthly, No assignement can be made, but by such as haue a freehold, (as hath bin said) or against whom a writ of Dower doth lie; and therefore (h) an assignement by a gardein in socage is void, but a gardein in chiualrie may assigne dower, as shall be said hereafter, because a writ of dower lieth against him, and not against a gardein in socage.

(h) 31.E.1.Dower 151. 29.Ass.68. 15.E.3.Dower 69.

Eightly, And before the gardein in chiualrie enter, the heire within age (i) may assigne dower, for the gardein may waiue the wardship. And so briefely haue you heard, of what, by whom, and to whom the assignement must be made. But there needeth neither liuerie of seisin, nor writing, to any assignement of Dower, because it is due of common right.

(i) 7.R.2. admeasurement 4. F.N.B.148.f.

Section 40.

¶ Dowment ex assensu Patris est lou le pier est seisie de Tenements en fee, & son fits & heire apparēt, quant il est espouse, endowe sa feme al huys del Monasterie ou del Eglise, de parcel de Terres ou Tenements son pier, ō assent son pier, & assigne la quantitie & les parcels. En ceo case apres le mort le fits,

Dowmēt by assent of the father is, where the father is seised of Tenements in fee, and his sonne and heire apparent when he is married, endoweth his wife at the Monasterie or Church doore, of parcel of his fathers lands or Tenements with the assent of his Father, and assignes the quantity and parcels; In this case after the death of the

¶ *Lou le piere est seisie de Tenements en fee.* Tenant for life of a Carue of Land, the reuersion to the father in fee, the sonne and heire apparent of the father endoweth his wife of this Carue, by the assent of the father, the Tenant for life dieth, the husband dieth, the reuersion was a Tenement in the father, and yet this is no good endowment ex assensu patris, because the father at the time of the assent had but a reuersion expectant vpon a freehold, whereof hee could not haue endowed his owne wife, and albeit the tenant for life died, liuing the husband, yet, quod initio non valet tractu temporis non conualescet.

Brit.c.109. Flet.li.5.c.22 23 Bract.li.5.305. 6.E.3.34. F.N.B.150.

ualescet. And for the most part, Dower ad ostium Ecclesiæ, and ex assensu patris, ensue the nature of a Dower at the Common Law. And for these the wife may haue a writ of Dower, albeit they be certaine, as for the third part at the Common Law.

¶ *Et son fits & heire apparent.* It must be such a sonne and heire apparent, as must continue an heire apparent, and therefore the youngest sonne and heire apparent cannot endow his wife ex assensu patris, of lands whereof the father is seised in fee of the nature of Borough English, because the father may haue another sonne, and then the husband is not heire apparent: and it is in respect of the constant and perpetuall apparance, that the sonne and heire apparant may endow his wife of his fathers land. And so it is of lands in Gauelkind: (k) and this is the reason that Dower ex assensu fratris, or consanguinei, is not good, for that albeit he is heire apparant at that time, yet for the common possibilitie that hee may haue issue, and euery issue that the brother or cosine should haue afterwards, shall exclude him, hee is no such heire apparent as the Law intendeth. (l) But an endowment ex assensu matris, is as good as ex assensu patris, because there is an apparance of a constant and perpetuall heire. And some haue said, that if the father after his assent be attainted of treason or felonie, that the wife in that case loseth her dower, because her husband doth not continue heire.

(k) 8.H.3. Dower 195. 9.H.3. Dow. 191. 11.H.3. Dower. F.N.B.150.l. 29.E.3. Dower 134.

(l) F.N.B.150.e. Flet.lib.5. cap.22. Bract.lib.4.305. Anon. Gorges case.li.6.fo.22.

¶ *Quant il est espouse, endow sa feme.* (m) In this case, albeit the freehold and Inheritance is in the father, yet in respect (as hath been said) of the constant and perpetuall appearance of the heire, the heire apparent doth endow, and the father doth but assent. And therefore where the father did endow the wife of his sonne and heire apparent, that endowment was holden void, because the husband in that case must endow, and the father assent.

(m) 2.H.3. Dower 199. 6.E.3.34. 8.E.2. Dow. 154.

And it is holden in 2.H.3. Dower 199. That if the heire apparent be within age, yet the endowment ex assensu patris is good. Note, Littleton in the case of Dower ad ostium Ecclesiæ, doth put the husband of full age, but here of the dower ex assensu patris, he speaketh generally.

2.H.3. Dower 199.

¶ *Et assigne le quantitie & les parcels.* So as both in Dower ad (n) ostium Ecclesiæ, & ex assensu patris, the certaintie must be expressed. And therefore when Bookes speake of a moitie, it is intended, (as hath beene said) of an halfe in certaine.

(n) 9 H.3. Dower 190. F.N.B.150.m.

¶ *Apres la mort le fitz sa feme entera.* In this case after the death of the husband the wife shall enter, or haue a writ of Dower albeit the father be aliue.

8.E.2. Dower 154.

¶ *Que il couient al feme dauer vn fait prouant son assent a cel endowment.*

¶ *Vn fait*, a Deed factum, this word (Deed) in the vnderstanding of the Common Law is an Instrument written in parchment or paper, (o) wherunto ten things are necessarily incident: Viz. First, writing. Secondly, in Parchment or Paper. Thirdly, a person able to contract. Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixtly, by a sufficient name. Seuenthly, a thing to be contracted for. Eightly, apt words required by Law. Ninthly, Sealing. And tenthly, Deliuerie. A Deed cannot be written vpon wood, leather, cloath, or the like, but onely vpon parchment or paper, for the writing vpon them can be least vitiated, altred, or corrupted.

(o) Bract. li.2. fol.33. &c. & li.5. fol.396. Brit. fol 34. 65.66.101. Flet. li.2. ca.14. & li.6.c.32. & li.3 c.3,4,5.6

If a deed (p) be alledged in Count or Plea, regularly it must be shewed to the Court, to the end the Court may iudge whither there be apt words to make it a good contract according to the rule of Law, whereof more shall be said in the chapter of conditions. But if non est factum be pleaded, because thereby the sealing, deliuerie, or other matter of fact is denied, it shal be tried by the Countrie. Of Deeds some be indented, and some be Deeds poll. Of indented, some be bipartite, some tripartite, some quadripartite, &c. whereof more shall be said in the Chapter of Conditions. Also of Deeds, some be inrolled, and some (q) be not inrolled; if it bee inrolled according to the Statute of 27.Hen.8.cap.10. it must be inrolled in parchment for the strength and continuance thereof, and not in paper, and so was it resolued in Parliament by the Iudges

(p) 4.E.2. Fines 116. 14.E.2 Ley 79. 4.E.2. Ley 8. 27.H.6.10. 27.H.8.22. F.N.B.122.I.

(q) Brit. fo.101. Bract.li.2. fol.33. Flet.lib.3.ca.14.

ges in anno 23. Eliz. Now for the rest of the points of a Deed, you shall read thereof plentifully in our Bookes, and in my Reports, which by this short instruction you shall easily vnderstand.

¶ *Vn fait de feoffement.* It is properly called Charta feoffamenti, and yet if such a deed be denied, the plea is non est factum. So as of deeds, some concerne the realtie, as here a deed of feoffement; some the personaltie, as a Deed of gift of goods, Obligations, Bills, &c. And some mixt, whereof more shall bee said in the Chapter of Releases.

If a man deliuer a writing sealed, to the partie to whom it is made, as an escrow to be his Deed vpon certaine conditions, &c. this is an absolute deliuerie of the Deed, being made to the partie himselfe, for the deliuerie is sufficient without speaking of any words, (otherwise a man that is mute could not deliuer a Deed) and Tradition is onely requisite, and then when the words are contrarie to the act which is the deliuerie, the words are of none effect, non quod dictum, sed quod factum est inspicitur. And hereof though there hath beene (r) varietie of opinions yet is the Law now setled agreeable to iudgements in former times, and so was it resolued by the whole Court of Common-pleas. But it may be deliuered to a stranger, as an escrowe, &c. because the bare act of deliuery to him without words worketh nothing. And this is the ancient diuersitie (s) in our bookes the record whereof I haue seene agreable with the reason of our old bookes. And as a Deed may be deliuered to the partie without words, so may a Deed be deliuered by words without any act of deliuery, as if the writing sealed lyeth vpon the table, and the feoffor or obligor saith to the feoffee or obligee, Goe and take vp the said writing, it is sufficient for you, or it will serue the turne, or take it as my Deede, or the like words, it is a sufficient deliuery.

35. *Ass. Pl.* 11. *Tr.* 27. *H.* 8. *Dier* 95.
(r) *Tr.* 43. *Eliz. inter Hanbesby & Lacher in the Kings bench. Hill.* 12 *Ia. R. in the Common place.*
(s) 13. *H.* 8. 19 *H.* 8. 8. 4. *E.* 3. 18. 13. *H.* 4. 8.

Of Deeds and their destinctions you shall reade excellent matter in Antiquitie. (t) Cartarum, alia regia, alia priuatorum, & regiarum, alia priuata, alia communis, & alia vniuersitatis. Priuatarum, alia de puro feoffamento & simplici, alia de feoffamento conditionali siue conuentionali, alia de recognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni non é contra debent inservire.

(t) *Bract. lib.* 2. *fo.* 33. *b. Fleta lib.* 3. *ca.* 14.

Carta non est (u) nisi vestimentum donationis. Carta non est nisi vestimentum orationis. Nemo tenetur armare aduersarium suum contra se. Scriptum est instrumentum ad instruendum quod mens vult. Carta est legatus mentis. (w) Benignæ sunt faciendæ interpretationes cartarum propter simplicitatem laicorum vt res magis valeat quam pereat. Nihil tam (x) conueniens est naturali equitati quam voluntatem domini volentis rem suam in alium transferre ratam habere.

(u) *Fleta lib.* 6. *ca.* 28. *Bracton. Bracton lib.* 2. *fo* 34.
(w) *Bracton lib* 2. *fo.* 94. 95.
(x) *Idem lib.* 2 *fo* 18.

Ex verbis scripto consensu, traditione
Iunctura vestes sumere pacta solent.

(y) *Pl. Com. in Throgmorton case fo.* 161. *b.*

Verba cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter est intelligendum. Verba debent intelligi secundum subiectam materiam. Carta de non ente non valet.

Note, the father may (a) make a Deede to the wife of his sonne, and so is the Law holden for that the fathers land by his assent is charged with a future freehold whereunto a Deede is requisite, but to a Dower Ad ostium Ecclesiæ no Deede is requisite. And here it is not well done (of him that made the addition to our Author) to vouche 44. E. 3. fo. 45. because the Author himselfe vouched it not, for if he (b) meant to haue vouched authorities, he would haue vouched more then one in this case, and those that (c) he vouched hee would haue cited truly, but this case is mistaken both in the yeare and in the Leafe, for where it is cited in 44. E. 3. it is in 40. E. 3. and where he saith it is fo. 45. it is fo. 43.

(a) 3. *E.* 2. *Dower* 126. 8. *E.* 2. *Dower* 154. 6. *E.* 3. 34. 40. *E.* 3. 43.
(b) 11. *H.* 3. *Dower* 186. 14. *H.* 3. *Dower.*
(c) 2. *E.* 2. *Dower* 125. *Vid. Statut. Wallie anno.* 12. *E.* 1. *fo.* 18. *in veteri magna carta.* 47. *H* 3. *Dower* 174.

An assignment of Dower (d) either ad ostium Ecclesiæ or ex assensu patris may be made of more than a third part. But the ancient Law was that no greater assignement could bee made in those cases but of a third part, but lesse he might, as it appeareth in Glanuill.

(d) *F. N. B.* 150. *p. Glanvil. lib.* 6. *ca.* 1. 2. 3.

Section 41.

¶ Et si apres mort le baron el enter & agree a ascun tiel dower de les dits dowers ad ostium ecclesiæ, &c. Donque

And if after the death of her husband she entreth, and agree to any such dower of the said dowers at the Church dore, &c. then

¶ *Cest est conclude a claimer ascun anter dower per la common ley.* Wherein a diuersitie is to be obserued betweene a Dower ad ostium Ecclesiæ, or ex assensu patris, and a ioynture

Vernons case lib.4 fo.1. 1. Mar. Dier 91. 31 E.3. Scire fac. 99. 20.E.4.3.

ſoynture or eſtate made to the wife in ſatisfaction of her Dower, for one of thoſe Dowers being aſſented vnto is a barre of the Dower at the Common Law, but a ſoynture was no barre of her Dower at the Common law. For a right or title that one hath to a freehold cannot be barred by acceptance of collaterall ſatisfaction. But a woman cannot haue a double dower, viz. ad oſtium Eccleſiæ, &c. and at the Common law, for the wife of one husband can haue but one dower. But ſince Littleton wrote by the Statute of

el eſt conclude de claimer aſcun auter dower per le common ley, daſcuns terres ou tenements q̃ux fuerent a ſa dit baron. Mes ſi el voit, el poit refuſer tiel dower ad oſtium eccleſiæ, &c. & donq̃ el poit eſtre endow ſolonq̃ le cours del common ley.

ſhe is concluded to claime any other dower by the Common law of any the lands or tenements which were her husbands, but if ſhee will, ſhee may refuſe ſuch dower at the Church dore, &c. and then ſhe may bee endowed after the Courſe of the Common law.

27.H.8. cap.10. (a) 12.E.2. Dower.158. 27.H.8.ca.10. verſus finem.

27.H.8. if a ſoynture be made to (a) the wife according to the purview of that ſtatute it is a barre of her dower ſo as the woman ſhall not haue both ſoynture and dower, and to the making of a perfect ſoynture within that ſtatute fiue things are to be obſerued. Firſt, her ſoynture by the firſt limitation is to take effect for her life in poſſeſſion, or profit preſently after the deceaſe of her husband, Secondly, that it be for the tearme of her owne life, or greater eſtate. Thirdly, it muſt be made to her ſelfe, and to no other for her. Fourthly, it muſt be made in ſatisfaction of her whole dower, and not of part of her dower. Fiftly, it muſt either be expreſſed, or averred to be in ſatisfaction of her dower. And ſixtly, it may be made either before or after mariage.

Concerning the firſt, if a man make a Feoffment in fee of Lands or Tenements either before or after mariage to the vſe of the husband for life, and after to the vſe of A. for life, and then to the vſe of the wife for life in ſatisfaction of her dower, this is no ſoynture within the ſtatute, becauſe by the firſt limitation it was not to take effect in poſſeſſion or profit preſently after the death of her husband, And albeit in that caſe A. ſhould dye liuing the husband, and after the death of the husband the wife entreth, yet this is no barre of her dower, but ſhe ſhall haue her dower alſo becauſe it is not within the ſaid ſtatute, and (as it hath beene ſaid) by the Common law it was no bar of her dower. 2. It muſt be either in fee taile, or for term of her own life, for an eſtate for life or liues of one or many other, [redacted] or to her for a C. or 1000. yeares, &c. if ſhe liue ſo long, or without ſuch limitation is no barre of her dower, albeit they be expreſſely made in ſatisfaction of her dower, cauſa qua ſupra. 3. If an eſtate be made to others in fee ſimple, or for her life vpon truſt ſo as the eſtate remaine in them, albeit, it be for her benefit, and by her aſſent, and by expreſſe words to be in full ſatisfaction of her dower, yet is this no barre of her dower. The fourth is ſo plaine as it needeth not any example. 5. A deuiſe by Will cannot be averred to be in ſatisfaction of her dower, vnleſſe it bee ſo expreſſed in the Will. 6. If the ſoynture be made before marriage, the wife cannot waiue it and clayme her dower at the Common law, but if it be made after mariage, ſhe may waiue the ſame and clatme her dower. I haue touched theſe points the more ſummarily, becauſe they are reſolued at large with the reaſons thereof in Vernons caſe vbi ſupra. So as to comprehend all in few words, a ſoynture (which in common vnderſtanding extendeth as well to a ſole eſtate as to a ſoynt eſtate with her husband) is a competent liuelihood of freehold for the wife of Lands or Tenements, &c. to take effect preſently in poſſeſſion or profit after the deceaſe of the husband for the life of the wife at the leaſt if ſhe her ſelfe be not the cauſe of determination or forfeiture of it. Which ſee more at large in Vernons caſe vbi ſupra. If a ſoynture bee made to a wife of lands before the Couerture, and after the husband and wife Alien by fine thoſe lands ſo conueyed for her ſoynture, ſhe ſhall not be endowed of any of the other lands of her husband. But if the ſoynture had beene made after mariage notwithſtanding the alienation by the husband and wife thereof by fine, yet ſeeing her eſtate was originally waiuable, and the time of her election came not till after the deceaſe of her husband ſhe may claime her dower in the reſidue of her lands. But in the other caſe, the ſoynture of the wife made before mariage was not waiueable at all, now as the dower ad oſtium Eccleſiæ and ex aſſenſu patris is better for the wife, becauſe in reſpect of the certainty, ſhe may enter, then the dower at the Common Law, where ſhee is driuen to her reall action, and therefore Britton calleth Dower ad oſtium Eccleſiæ and ex aſſenſu patris eſtabliſhment of dower by the husband and aſſignement of Dower after his deceaſe (for nothing that is vncertaine is eſtabliſhed.) So a ſoynture that hath the force of a barre of Dower by the ſaid act of 27.H.8.) is as hath beene ſaid more ſure and ſafe for the wife then either Dower ad

Leake & Ra-dal's caſe, lib.4 fol.4.

Vid. Vernons caſe vbi ſupra, fo.2.b.

Dier, 19.Eliz.358.

Britt. cap.102.103.

ad ostium Ecclesiæ or ex assensu patris, for besides it is as certaine as those others, and shee may enter into it, after the death of her husband and not be driuen to her action. She shall not be barred of her ioynture albeit her husband cõmit treason or felonie, as she shalbe both of her Dower ad ostium Ecclesiæ and ex assensu patris by the Common Law. But now at this day by the statutes of 1.E.6.cap.2. and 5.E.6.cap.11. a wife shall not lose any title of Dower which to her was accrued by the attainder of her husband for any maner of murder or other felony whatsoeuer. But (a) if the husband be attainted of high treason or petis treason she shalbe (b) barred of her dower at this day, so long as that attaindre standeth in force.

¶ *Conclude*, commeth of the (c) verbe concludo which is deriued of con and claudo to determine, to finish, to shut vp, to estoppe, or barre a man to pleade or clayme any other thing, Vid. Estoppell.

Britt. 31. *lib.* 4. *Britton. ca.* 15.

1.E.6.ca 6. 5.E.6.ca 11.

(a) *Stanford.* 195.b
(b) *Vid. in the chapter of Garranty. Sect.*
(c) *Pl. Com.* 276.b. *per Walsh. Vid. Sect.* 693.695. 667.679.

Section 42.

CEt nota que nul feme serra endow ex assensu patris en le forme auantdit, mes lou sa baron est fits & heire apparant a son pier. Quære de ceux deux cases de dowment ad ostium Ecclesiæ, &c. si la feme al temps del mort sa baron, ne passe lage de ix. ans, si el auera dower ou non.

AND note that no wife shall bee endowed *ex assensu patris* in forme aforesaid, but where her husband is sonne and heire apparant to his father. *Quære* of these two cases of dowment *ad ostium ecclesiæ, &c.* if the wife at the time of the death of her husband bee not past the age of 9. yeares, whither shee shal hauedower or no.

CNvl feme serra endowed, &c. Of this sufficient hath bæne said before.

¶ *Quære de ceux deux cases de dowment ad ostium Ecclesiæ, &c.* And it seemeth that these Dowers being made by assent, &c. that the same are good albeit the wife bee within the age of Nine yeares, for Consensus tollit errorem. But without question, a ioynture made to her vnder or aboue the age of Nine yeares, is good.

Section 43.

CEt nota que en touts cases lou le certainty appiert queux tres ou tenements feme auer pur sa dower, la le feme poit entrer apꝰ la mort sa baron, sans assignement de nulluy. Mes lou le certaintie ne appiert, si come destre endow de la tierce part dauer en seueraltie, ou del moitie solonque le custome de teuer

AND note that in all cases, where the certaintie appeareth what lands or tenements the wife shall haue for her dower, there the wife may enter after the death of her husband without assignement of any. But where the certaintie appeares not, as to be endowed of the 3. part to haue in seueralty, or the moity according to the custom

CEt nota que en touts cases, &c. In all cases where the demaund of the Dower is certaine as in case of Dower ad ostium Ecclesiæ or ex assensu patris, there the wife after the death of the husband may enter. But where the demaund is vncertaine as in writs of Dower at the Common Law, there albeit the thing it selfe be certaine, yet shall she not take it without assignement, As if a woman bring a writ of dower of three shillings rent, albeit shee ought to bee endowed of one shilling, yet cannot shee after iudgement distreine for twelue pence before assignement, because the demaund was vncertaine

40.E.3.22.43.45.E.3.4. 20.E.3.*barre.*132. 8.E.2.*Entry* 75.

taine. And ſo it is if two tenants in common bee, and the wife of one of them bring a writ of dower to be endowed of a third part of a moitie, and haue iudgement to recouer, yet cannot ſhee enter without aſſignement, albeit the aſſignement cannot giue her any certaintie becauſe her husbands ſtate was incertaine. See more of this before Section 39.

en ſeueraltie, en tielz caſes il couient que ſa dower ſoit a luy aſſigne aps le mort del baron, pur ceo que non conſtat deuant aſſignemẽt quel part des terres ou tenements el auera pur ſa dower.

to hold in ſeueraltie. In ſuch caſes it behoueth that her Dower bee aſſigned vnto her after the death of her husband, becauſe it doth not appeare before aſſignement what part of the lands or tenements ſhe ſhall haue for her dower.

Sect. 44.

Of this ſufficient hath beene ſaid before, and that in this caſe, the wife cannot enter without aſſignement.

¶ Mes ſi ſoient deux ioint-tenants de certaine terre en fee, & lun alien ceo que a luy affiert a vn auter en fee, que puis deuie, en ceo cas la feme pur ſa dower auera le tierce part de la moitie que ſa baron ad purchaſe, a tener en common (come ſa part amountera) ouesque lheire ſa baron, & ouesque lauter iointenant que ne aliena pas, pur ceo que en tiel cas ſa dower ne poit eſtre aſſigne per metes & bounds.

BVt if there be two ioyntenants of certaine land in fee, and the one alieneth that which belongeth to him, to another in fee, who taketh a wife, and after dieth. In this caſe the wife for her dower ſhal haue the third part of the moitie which her husband purchaſed, to hold in common (as her part amounteth) with the heire of her husband, and with the other iointenant, which did not alien. For that in this caſe, her dower cannot be aſſigned by metes and bounds.

Sect. 45.

¶ The reaſon of this diuerſitie is for that the iointenãt which ſuruiueth, claymeth the land by the feoffment, and by ſuruiuorſhip, which is aboue the Title of Dower, and may plead the feoffment, made to himſelfe without naming of his compagnion that died, as ſhall bee ſaid hereafter in his proper place, but Tenants in common haue ſeuerall Freeholds and Inheritances, and their moities ſhall diſcend to their ſeuerall heires, & therefore their wiues ſhall be indowed.

¶ Et eſt aſcauoir, q̃ la feme ne ſerr̃ my endow de terres ou tenements q̃ ſa baron tient iointment ouesque vn auter al temps de ſon morant: mes lou il tient en common auterment eſt, come en le caſe prochein auantdit.

AND it is to be vnderſtood that the wife ſhall not bee endowed of lands or tenemẽtswhich her husband holdeth iointly with another at the time of his death: but where hee holdeth in common, otherwiſe it is as in the caſe next aboueſaid.

Sect.

Sect. 46.

¶ Et est ascauoir que si tenant en le taile endowa sa feme ad ostium Eccleſiæ, come est auantdit, ceo seruera pur petit ou rien al feme, pur ceo que apres la mort sa baron, issue en le taile puit entrer sur le possession la feme: Et issint puit celuy en le reuers. si ne soit issue en le taile en vie &c.

AND it is to bee vnderstood, that if tenant in taile endoweth his Wife at the Church doore, as is aforesaid, this shall little or nothing at all auaile the wife, for that, that after the decease of her husband, the issue in taile may enter vpon her possession, and so may he in the reuersion, if there bee no issue in taile then aliue.

¶ The Reason of this is, for that tenant in taile is restrained by the said statute of 13. E. 1. De donis conditionalibus. And so did our Authour take the law in his Learned reading. Here our Authors reason is à fine, *Vide Sect. 194.*

and therefore such an Endowment is not to bee made because it is to ends.

Sect. 47.

¶ Auxy si home seisi en fee simple estеant deins age endowa sa feme al huis del monasterie ou deglise, & deuie, & sa feme enter, en ceo cas lheire la baron luy puit ouster. Mes autерment est (come il semble) lou le pier est seisie en fee, & le fits deins age endow sa feme ex assensu patris, le pier donque eſteant de plein age.

ALSO if a man seised in Fee Simple beeing within age endoweth his wife at the Monasterie or Church doore, and dieth, and his wife enter, in this case the heire of the husband may oust her. But otherwise it is, (as it seemeth) where the father is seised in fee, and the sonne within age endoweth his wife *ex assensu patris*, the Father being then of full age.

¶ The reason of this diuersitie is for that in the first case the husband within age is seised and therefore hee beeing within age cannot by a voluntarie act bind himselfe: otherwise it is where he doth an act whereunto hee is compellable by law, but in the latter case the Father which giueth the assent, is seised of the freehold and Inheritance, and the Sonne therein hath nothing, *Vid 9. H. 3. tit. dower 197.*

and therefore his Heire shall not anoide it in respect of his Infancie.

Section 48.

¶ Auxy il y ad vn auter endowment, que est appel dowment de la pluis beal. Et ceo est come en tiel case, que home seisie de xl. acres de terre, & il tient vint

ALSO there is another dower which is called dowment *de la pluis beale*. And this is in case where a man is seised of fortie acres of land, and hee holdeth twentie acres of

¶ ET *le Seignior de que le terre est tenus en Chiualrie enter en les vint acres tenus de luy*. For hee is not possessed as a Garden against whom a writt of Dower lieth, vntill hee doth enter: of the Wardship of the bodie hee is possessed before seisure, because it

it is transitorie, but hee is not possessed of the land vntill hee enter because it is permanent. And therefore if hee doth not enter, the heire within age may assigne Dower as hath beene said, and as it appeareth afterwards.

¶ *Si en tiel case el port breue de dower en-uers le Garden en Chiualrie.* Albeit (a) the Garden in Chiualrie or the Grantee of the King of a wardship hath but a chattle during the minoritie of the heire, and the woman shall recouer a freehold in her Writ of Dower, yet after the Garden as is aforesaid, hath entred into the land, that Writ lieth against him, and not against the heire who is tenant of the freehold, because the law hath trusted the Garden to plead for the heire within age, and that is in his custodie, and also for his owne particular interest, and by this diuersitie all the Bookes bee reconciled. So likewise if the Garden dieth, the wife shall haue a Writ of Dower against his Executors, and if there bee two Executors, and one of them alone take the profits, the Writ of Dower shall bee maintained against him only. If a man bee possessed of the wardship of certaine land, either ioyntly with his wife or in the right of his wife, yet the Writ of Dower lieth against the husband only. Garden in Socage shall not endow herselfe de la pluis beale without iudgement, as shall be said hereafter.

¶ *Le Garden en Chialrie poit pleader.* The authoritie of Littleton is direct that the Garden may plead this plea. But hereof ariseth two questions. First, whither if the heire bee vouched by the tenant in the Writ of Dower in the gard of the Garden, whither he comming in as Vouchee may plead that plea. The second is, whither if the Garden in socage haue

(a) 44 E. 3. 13. 4. H. 6 11. Sta. f. per. 13. 6. E. 3. 15. 16. E. 3. breue 657. Temps E. 1. breue 863. 11. E. 3. breue 473. 45. E. 3. 5. 17. E. 3. 70. 1. H. 7. 17. 4. H. 7. 1. 4. H. 7. aid le Roy 33. 38. E. 3 13. 9. H. 6. 6. b. 39. E. 3. 8. 8. E. 2. Dower 169. 8 E. 2. breue 809. 42. E. 4. Dower 16.

Vid. le statut. de bigamis cap. 3.

8. E. 3. 5.

2. E. 3. 15. & 31. 38. E. 3. 37. 47 E. 3. 9. b.

acres de les dits xl. acres de terre dun y seruice de chiualrie, & les autres vint acres de terre dun auter en socage, & pñt feme, & oñt issue fits, & mozust, son fits esteant deins lage de xiiij. ans, & le Seignior de que la terre est tenus en chiualrie, entre en les xx. acres tenus de luy, & eux ad come gardein en Chiualrie durãt le nonage lenfant, & la mere de lenfant enter en le remnant, & ceo occupie come gardein en socage: si en tiel case le feme port briefe de dower enũs le gardein en chiualrie, destre endow de les tenements tenus per seruice de chiualer en le Court le Roy, ou en auter Court, le gardein en chiualrie puit plede en tiel case tout cest matter & monstre coment la feme est gardein en socage, coment deuant est dit, & pzie q̃ serra adiudge per la Court que le feme luy mesme endowera de le pluis beale de les tenements que el ad come gardein en socage solonque le value de le tierce part

the said fortie acres of one by Knights Seruice, and the other twentie acres of another in Socage, and taketh wife, and hath issue a sonne, and dieth, his sonne being within the age of fourteene yeeres, and the Lord of whom the Land is holden by Knights Seruice entreth into the twentie acres holden of him, and holdeth them as Garden in Chiualrie, during the nonage of the infant, and the mother of the infant, entreth into the residue, and occupieth it as Garden in Socage. If in this case the Wife bringeth a Writ of dower against the garden in Chiualrie to be endowed of the tenements holden by Knights Seruice, in the Kings Court or other Court, the Garden in Chiualrie may pleade in such case all this matter, and shew how the wife is Garden in Socage, as aforesaid, and pray that it may bee adiudged by the Court, that the wife may endow her selfe *de le pluis beale* .i. of the most faire, of the tenements which shee hath as Garden in So-

que

que el claime dauer de les tenements tenus en chiualrie per la briefe de Dower. Et si la feme ceo ne puit dedire, donq̃ le iudgement serra fait, que le gardeine en chiualrie tiendra les terres tenus de luy durant le nonage lenfant, quit de la feme, &c.

cage, after the value of the third part which shee claimes by her writ of dower, to haue the tenements holden by Knights Seruice. And if the wife cannot gainsay this, then the iudgement shall be giuen, that the Garden in Chiualry shall hold the Lands holden of him during the nonage of the infant, quite from the woman, &c.

not sufficient, as if the Land holden by seruice of Chiualrie be thirtie Acres, and the lands holden in Socage but fiue Acres, whether she shall be endowed by parcels, viz. to recouer fiue Acres against the Garden in Chiualrie, and to retaine fiue Acres. And as to the first the Garden shall as well plead it, when he came in as Voucher, as when he is tenant. And as to the second some say that the demandant in the writ of Dower must haue Assets in her hands to the value of her Dower, so as she shal not be partly endowed against the Garden, and partly retaine in her owne hands. And they say, that the iudgement should be in part, that is,

5.E.3.60. 2.E.3.31. Lib.Intrat. Dower fol.225.a. 18.E.3.4.b.

14.H.7.26. Keble.

as to the land in Socage in seueraltie, and as to the land in Chiualrie to recouer the third part, and compare it to the Case in 8.E.4.3. that damages shall not be recouered, partly against the defendant in an appeale, and partly against the Abettors, but entirely either against the one or the other. And Littleton here putteth his Case that the Garden in Socage hath Assets in value, and seeing it is a Dower against common right, they hold that she must be intirely endowed either by her selfe against common right, or against the Garden according to common right. But (a) yet by the Booke in 25.E.3.52.b and others it appeareth that she may in this very case retaine for part, and recouer against the Garden for part.

(a) 25.E.3.52.b. 4.E.2. 1st.diff fin 10. Regist.indic. 26. Lib.Intrat.22. 16.E.3.breue 657.20.E.3.iugement 175.

(Gardein in Chiualrie (b) shall plead in barre of her dower, detainment, or eloigning of the bodie of the Ward, because his marriage doth appertaine vnto him: And if the heire come in (c) as vouchee, hee shall plead the same plea. But he shall not plead detainment of the Charters, (d) because the Charters concerning the inheritance of the heire, belong not to the gardein. The gardein in Chiualrie (e) may assigne dower of the lands and tenements he hath in ward, or if he assigne a rent out of those lands in allowaunce of her dower, it is good. If the Gardein in Chiualrie assigne too much for her dower, the heire shal haue a writ of Admeasurement by the Common Law. And so (f) if the heire within age assigne before the gardeine enter, to the wife too much in the dower, the Gardein shall haue a writ of Admeasurement, by the statute of West.2.cap.7. And if the heire within age, before the gardein enter into the land, assigne too much in dower, he himselfe shall haue a writ of Admeasurement at full age: and some haue said, that in that case he may haue it within age. (g) But if the heire (before the gardein enter) endow the wife of more than she ought, and the gardeine assigne ouer his estate, his assignes shall haue no writ of Admeasurement, because it was a thing in action. Also the heire shall haue an (h) Admeasurement for the assignement in the life of his ancestor, by the Common Law, (i) and a writ of Admeasurement lieth vpon an assignement in Chancerie.

(b) 7.E.3.37.8.E.3.71.
(c) 17.E.3.58.
(d) 10.E.3.50.6.El.Dy.230
(e) 3.E.3.Dow.75. 8.Ed.2. Dower 155. W.2.cap 7.
(f) Bract.li.4.314.Reg. original.171. Plet.li.5.ca.22. 7.E.2.tit.Admes.13. F.N.B.149.
(g) 7.R.2.Admes.4 F.N.B.148.i.
(h) 7.R.2 vbi su. F.N.B.149.a
(i) 7.R.2.vbi sup 12.H.6. Admes.9. F.N.B 149. 25.E.3.51.

¶ *Donques le iudgement serra fait que le gardein en Chiualrie tiendra les Terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

¶ *Iudgement.* Iudicium quasi iuris dictum, **the verie voyce of Law** and right, and therefore, iudicium semper pro veritate accipitur. The antient words of Iudgment are verie significant, Consideratum est, &c. because that Iudgement is euer giuen by the Court vpon due consideration had of the Record before them: and in euerie Iudgement there ought to be three persons, Actor, Reus, and Iudex. Of Iudgements, some be finall, and some not finall, whereof you shall read more hereafter. And now to returne to our Author, it is materiall that these words (& cætera) be explained at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred̃ prædicti in custodia sua existen̄ ad valentiam p̄d̃. 3 partis cum pertinen̄ tenend̃ nomine dotis suæ pro præd̃ 3. parte superius per eam petit̃. Many sorts are of opinion, that vpon this iudgement the demandant may not in any sort endow her selfe of the land, because she cannot doe an act to her selfe, but he shall recoupe the third part of the profits vpon her account, and be endowed against the heire at his full age. But obserue what Littleton saith in the next Section: but before you come to that, obserue what priuiledge the common Law giueth to the land holden by Knights service, viz. that it shall not be dismembred, but the whole

22.E.4.Dow.16.16.E.3. Wms.100.45.E.3.6.

whole dower taken of the lands holden in Socage, and the reason is, for that Knights service is for the defence of the Realme, which is pro bono publico, and therefore to be fauoured.

Section 49.

ET nota, que apres tiel iudgement done, la feme puit prender ses Vicines, & en lour presenc̃ endower luy mesme p metes & Bonds, de la pluis beale part de les tenemts que el ad cõe gardein en Socage, dañ et tener a luy pur terme de sa vie, & tiel Dower est appel Dower de la pluis beale.

AND note, That after such a Iudgement giuen, the wife may take her Neighbours, and in their presence endow her selfe by Metes and Bonds, of the faireſt part of the Tenements which shee hath as Gardein in Socage, to haue and to hold to her for terme of her life: & this Dower is called *Dower de la plus beale.*

And the iudgement, viz. Tenend̃ noĩe dotis, proueth, that she may haue it for terme of her life, for euerie dower is for terme of life.

Section 50.

15.E.3.Dow.69.
16.E.3.tit.Wast.100.

¶ *Ou le iudgement est fait, &c.* For without such a iudgement, as appeareth before, Gardeine in Socage cannot endow her selfe, as likewise hath bin said before.

Brast.li.5.329.F.N.B.7,8.

¶ *Ou en auter court.* That is by Writ of Right of Dower in the Court of the heire, if he haue any, or of the Lord of whome the Land is holden.

¶ *Et ceo est pur saluation del estate del gardein en Chiualrie, durant le nonage de lenfant.* For the heire (before the entre of the Gardein) cannot plead the said plea, that the demandant should endow her selfe de la pluis beale. And the reason of this dower de la pluis beale to be all of the Socage land, was for aduancement of Chiualrie for the defence of the Realme.

CET nota, q̃ tiel Dowment, ne puit este, mes lou le iudgement est fait en le court le Roy, ou en auter court, &c. et ceo est pur saluation del estate del Gardeine in Chiualrie durant le nonage le Enfant.

AND note, that such dowment cannot be, but where a iudgement is giuen in the Kings Court, or in some other Court, &c. And this is for the preseruation of the estate of the gardein in Chiualrie, during the nonage of the Infant.

Sect. 51.

This is manifest of it selfe, and therefore needeth no explanation.

CET istint poyes veier cinque manners de dower, s̃, Dower per le common Ley, Dower per le custome, Dower ad ostium Eccleſiæ, Dower ex assensu patris, & Dower de la pluis beale.

AND so you may see fiue kinds of Dower, *viz.* Dower by the Common Law, Dower by the custome, Dower *ad ostium Eccleſiæ*, Dower *ex assensu Patris*, and Dower *de la pluis beale.*

Sect.52.

¶ ET memorandū que en chescun case lou home prent feme seisie de tiel estate de tenemts, &c. issint que lissue que il ad per son feme poit p possibilitie enheriter mesmes les tenements de tiel estate que la feme ad come heire al feme, en tiel case apres le mort la feme il auera mesmes les Tenements per le curtesie de Angleterre, & auterment nemy.

AND *memorand*, that in euerie case where a man taketh a wife seised of such an estate of Tenements, &c. as the issue which he hath by his wife may by possibilitie inherit the same Tenements of such an estate as the wife hath, as heire to the wife; In this case after the decease of the wife, he shall haue the same tenements by the curtesie of England, but otherwise not.

¶ *Memorandū*, This word doth euer betoken some excellēt point of learning, which our author hath vsed in other places, as appeareth in the margent. *Sect.*234.301.335.

The matter hereof hath bin partly explaned in the Chapter of Tenant by the curtesie.

If a man (a) taketh a wife seised of lands or tenements in fee, and hath issue, and after the wife is attainted of felonie, so as the issue cannot inherit to her, yet he shall be tenant by the Curtesie, in respect of the issue which he had before the felonie, and which by possibilitie might then haue inherited. But if the wife had beene attainted of felonie before the issue, albeit hee hath issue afterward, he shal not be tenant by the Curtesie. (a) 21.E.3.9.11.H.7. 3.H.7.17.*Stamf.*195. 27.E.3.77.46.E.3.*Per.*20. 20.*Ass.p.*2.13.H.4.8.

¶ *Come heire al fee.*

This doth implie (b) a secret of Law, for except the wife be actually seised, the heire shall not (as hath been said) make himselfe heire to the wife: and this is the reason that a man shall not be Tenant by the Curtesie, of a seisin in Law. (b) *Li.*8.*fo.*34.*in Paines case.*

Section 53.

¶ ET auxy en chescun case lou le feme prent baron seisie d tiel estate des tenements, &c. Issint q̄ si p possibilitie il puissoit happer q̄ si le feme auoit ascun issue p sa barō, & que m̄ lissue puissoit per possibilitie enheriter mesmes les Tenements de tiel estate que l' baron ad, come heire a l' baron, de tiels Tenemts el auer̄ sa dower, & auterment nemy. Car

AND also in euerie case where a woman taketh a husband seised of such an estate in tenements, &c. so as by possibilitie it may happen that the wife may haue issue by her husband, and that the same issue may by possibilitie inherite the same Tenements of such an estate as the husband hath, as heire to the husband. Of such tenements shee shal haue her dower, & otherwise not. For

¶ *Issint que si per possibilitie il puit happer que le feme auoit ascun issue per son baron.* Albeit the wife bee a hundred yeares old, or that the husband at his death was but foure or seuen yeares old, so as shee had no possibilitie to haue issue by him, yet seeing the Law saith, That if the wife be aboue the age of nine yeares at the death of her husband, she shall be endowed, and that women in antient times haue had children at that age, whereunto no woman doth now attaine; the Law cannot iudge that impossible, which by nature was possible. And in my time, a woman aboue threescore yeares old hath had a child, and ideo non definitur in 12.H.4.2.7.H.6.11,12.

inure. And for the husbands being of such tender yeres, he hath habitum, though hee hath not potentiam at that time, and therefore his wife shal be endowed.

¶ *Et que mesme lissue puissoit per possibilitie inheritermesmes les tenements, &c.* A man seised of land in generall taile, taketh wife, & after is attainted of felonie, before the said Statute of 1. E.6. the Issue should haue inherited, and yet the wife should not haue been endowed: For the Statute of W.2.ca.1. relieueth the issue in taile, but not the wife in that case. But at this day, if the husband be attainted of felonie, the wife shall be endowed, and yet the issue shall not inherit the Lands which the father had in fee simple. If the wife elope from her husband, &c. shee shall bee barred of her dower, as hath beene said, and yet the Issue shall inherit.

si tenemẽts sont donꝰ a vn hõe & a les hẽs que il engendra de corps sa feme, en tiel case la feme nad riẽs en les tenements, & le baron ad estate forsque come Donee en especiall taile: vncore si le baron deuy sans issue, mesme la feme serra endow de mesmꝰ les tenemẽts, pur ceo que lissue que el p possibilitie puissoit auer per mesme l' baron, puissoit enheriter mesmes les tenements. Mes si la feme deuiast, viuant sa baron & puis l' baron prist auter feme, & morust, sa second feme ne serra my endowen cest case, causa qua supra.

if tenements be giuen to a man, and to the heires which hee shall beget of the bodie of his wife, in this case the wife hath nothing in the tenements, and the husband hath an estate but as donee in speciall taile; yet if the husband die without issue, the same wife shall bee endowed of the same tenements, because the issue which shee by possibilitie might haue had by the same husband, might haue inherited the same tenements. But if the wife dieth, liuing her husband, & after the husbād takes another wife & dieth, his 2. wife shall not be indowed in this case for the reasō aforesaid

Section 54.

5.E.3. Voucher 249.
8.E.3. ff. 393.
4.H.6.24. F.N.B.149.

¶ You may easily perceiue by the context that this shaft came neuer out of Littletons quiuer of choice arrowes, And therefore I will leaue it. Only for Students sake I will referre them to 5.E.3. Voucher 249. 8.E.3.Ass.393. 4.H.6.24. F.N.B.149.

¶ NOta si vn home soit seisie de certaine terres & prist vn feme, et puis aliena mesme la terre oue garrantie, & puis le feoffor, & le feoffee deuiont, & le feme de le feoffor port vn action de dower enuers le issue le feoffee, & il vouch lheire le feoffor, & pendant le voucher & nient termine, la feme le feoffee port son action de dower enuers le heire le feoffee, & demaunda la tierce part de ceo

NOte if a man be seised of certaine lands, and taketh wife, and after alieneth the same land with warrantie, and after the feoffor and feoffee dye, and the wife of the feoffor bring an action of dower against the issue of the feoffee, and he vouch the heire of the feoffor, and hanging the voucher and vndetermined, the wife of the feoffee brings her action of dower against the heire of the feoffee,

de que ſa baron fuit ſeiſie, & ne voile demaunder le tierce part del eux deux parts de que ſa baron fuit ſeiſie, fuit adiudge, que el nauera iudgement tanque lauter plee fuit determine.

feoffee, & demand the third part of that wherof her husband was ſeiſed, and will not demand the third part of theſe two parts of which her huſband was ſeiſed, It was adiudged, that ſhe ſhould haue no iudgement vntill ſuch time as the other plea were determined.

Section 55.

CEt nota que Vauiſour dit, Que ſi vn home ſoit ſeiſie de terre et fait felonie, & puis alien, & puis eſt attaint, la feme auera bone action de Dower enuers le feoffee: Mes ſi ſoit eſchete al Roy, ou al ſeignior, el nauera bē de dower. Et ſic vide diuerſitatem, & quære inde legem.

AND note *Vauiſor* ſaith that if a man be ſeiſed of land and cõmitteth felony, and after alieneth, and after is attaint the wife ſhall haue a good action of dower againſt the feoffee: but if it be eſcheated to the King, or to the Lord, ſhe ſhal not haue a writ of dower. And ſo ſee the difference, and inquire what the law is herein.

¶ This is alſo of the new addition, & exploſa eſt hæc opinio, for it is cleere in Law that the wife at the Common law ſhould not haue beene endowed againſt the feoffee. For to deterre and retaine men from committing of treaſon or felony, the Law hath inflicted fiue puniſhments vpon him that is attainted of treaſon or felony. 1. Hee ſhall loſe his life and that by an infamous death of hanging betweene heauen and the earth as vnworthy in reſpect of his offence of either. 2. His wife that is a part of himſelfe (Et erunt animæ duæ in carne vna) ſhall loſe her Dower. 3. His blood is corrupted, and his children cannot be heires to him, and if he be noble or gentle before, he and all his poſteritie are by this attainder made ignoble. 4. He ſhall forfeit all his lands and tenements, And fiftly all his goods and chattels, and all this is included by the Law in the iudgement Quod ſuſpendatur per collum. But this is not intended of all felonies but of felony by ſtealing of goods aboue the value of xii. pence, and not of petit larceny vnder the value. So as the woman ſhall loſe her dower aſwell againſt the feoffee as againſt the Lord by eſcheate. And ſo it was reſolued in a writ of Dower brought by Mary Gates late wife of Iohn Gates, who after the couerture had infeoffed Wiſman in fee, and after committed high treaſon, and was thereof attainted, that the wife ſhould not be endowed againſt the feoffee, and in that caſe it was reſolued, that ſo it was at the Common Law in caſe of felony. And it is to be vnderſtood, that the wife ſhall not only loſe her reaſonable Dower at the Common Law for the felony of her husband, but alſo her dower ad oſtium Eccleſiæ and ex aſſenſu patris for felony done after the Dower aſſigned, and dower by cuſtome alſo. And the reaſon of all this is yeelded by Littleton himſelfe in the chapter of warranties, Section 746. to the end that men ſhould be afraid to commit felony. But at this day the wife of a man attainted of felony (as often hath beene ſaid) ſhalbe endowed by force of the Statutes in that caſe prouided.

Vid. Sect. 746.
Vid. Briton, cap. 109. lib. 1.
Bracton title euidens, lib. 4. fol 327. 30. 311.
Stanf. pl. cor. 194. 195.

Britton fol. 15. cap. 5.

Vid. Sect. 746.

M. 3. & 4. Ph. & Mar. Ro. 760. in com. banco. 8. F. 3. 20. 12. H. 4. 30.

Bracton lib. 4 fo. 311.

And it appeareth by Britton Que fem de homicide ne teigne nul dower de tenants que lour fuit aſſigne per lour barons, ſo as the wife of a felon attainted by the Common Law was diſabled to recouer dower ad oſtium Eccleſiæ and ex aſſenſu patris, as well as her reaſonable dower which the Common Law gaue her. See in Bracton many barres of dower as the Law was then held.

Vid. Sect. 746.
Britton cap. de homicide, fol. 15.
Bracton, lib. 4. fol. 308. & Fleta vbi ſupra & Britton vbi ſupra.

Chap. 6. Sect. 56.

Tenant a Terme de vie.

Brall lib. 2. ca. 9. & cap. 9. fol. 26. Fleta lib. 3. ca. 12. Britton fol. 83. Bracton 4. fol. 170. Vid Sect. 381.

Cy pur terme de vie dun auter home.

Now it is to be vnderstood that if the lessee in that case dieth liuing estq; que vie, (that is he for whose life the Lease was made) hee that first entreth shall hold the land during that other mans life, and hee that so entreth is within Littletons words, viz. tenant pur auter vie, and shalbe (a) punished for waste as tenant pur auter vie, and subiect to the payment of the rent reserued, and is in law called an occupant (occupans) because his title is by his first occupation. And so if tenant for his owne life grant ouer his estate to another, if the grantee dieth there shall bee an occupant. In like manner it is of an estate created by Law, for if tenant by the curtesie or tenant in dower grant ouer his or her estate, and the grantee dieth there shalbe an occupans. But against the King there shalbe no occupant, because nullum tempus occurrit regi. And therefore no man shall gaine the Kings land by prioritie of entrie. There can be no occupant of any thing that lyeth in grant, and that cannot passe without Deede, because euery occupant must claime by a que estate and auerre the life of Ce' que vie. It were (c) good to preuent the incertaintie of the estate of the occupant to adde these words, (to haue and to hold to him and his heires during the life of Ce' que vie) and this shall preuent the occupant, and yet the Lessee may assigne it to whom he will, or if he hath already an estate for another mans life without these words, then it were good for him to assigne his estate to diuers men and their heires during the life of Ce' que vie.

(a) Vid. le Deane de Worcest. case, lib. 6. fo. 7. 27. Ass 31. 39. 6. 3. 1. 27 H. 6. Recognizance Stath mpl. vltimo. 38. H. 6. 27. Bracton lib. 2. fol. 9. Britton fol. 84 85.

(b) 27. Ass p 31. & Pl. com. fol. 28. b. in Colthorst case tit. Barre 393.

(c) Littleton 167. 11. H. 4. 42. 17. E. 3. 48. 39. E. 3. 25. 7. H. 4. 46. 8. H. 4. 15. Dier. 8. Eliz. 253.

Cy pur terme de vie est, lou home lessa terres ou tenements a vn auter pur terme de vie le lessee, ou pur terme de vie dun auter home, en tiel case le lessee est tenant a terme de vie. Mes per cõmon parlance celuy que tient pur terme de sa vie demesne est appel tenant pur terme de sa vie, & cestuy que tient pur terme dauter vie, est appel tenant pur term dauter vie.

Tenant for term of life is, where a man letteth Lands or tenements to another for terme of the life of the Lessee, or for terme of the life of another man. In this case the Lessee is tenant for terme of life. But by common speech hee which holdeth for terme of his owne life, is called tenant for terme of his life, and he which holdeth for terme of anothers life, is called tenant for terme of another mans life.

Note that (d) to euery tenant for life, the Law as incident to his estate without prouision of the partie giueth him three kinde of estouers, (that is) housbote which is twofold, viz. estouerium edificandi & ardendi, Ploughbote, that is estouerium arandi. And lastly Hayebote, and that is estouerium claudendi and these estouers must bee reasonable estoueria rationabilia. And these the Lessee may take vpon the land demised without any assignement, vnlesse hee be restrained by speciall couenant for modus et conuentio vincunt legem. Bote in the Saxon tongue and estouers in the French in this case are of all one signification, that is to haue compensation or satisfaction for these purposes. Estouers commeth of the French word estouer. And the same estouers that tenant for life may haue, tenant for yeares shall haue.

(d) Brall. lib. 4. fo. 222. 231. 232. & vid. fo. 136. 137. Fleta lib. 4. ca. 19 25. 26. 29. 8. E. 3. 54. 55. 21. E. 3. 41. 48. E. 3. 31. 7. E. 4. 28. 21. H. 6. 46. 10. E. 4. 3. F. N. B. 180. lib. 4. 86. 87. in Luttrels case.

You haue perceiued, That our Author diuides Tenant for life into two branches, viz. into Tenant for terme of his owne life, and into Tenant for terme of another mans life: to this may be added a third, viz. into an estate both for terme of his owne life, and for terme of another mans life.

Vid. Sect. 381.

As if a Lease be made to A. to haue to him for terme of his owne life, and the liues of B. and C. for the Lessee in this case hath but one Freehold, which hath this limitation, During his owne life, and during the liues of two others. And herein is a diuersitie to bee obserued betweene seuerall estates in seuerall degrees, and one estate with seuerall limitations. For in the first, an estate for a mans owne life is higher than for another mans life, but in the second it is not. As if A. be tenant for life, the remainder or reuersion to B. for life, A. may surrender to B. for

Rosses case lib. 5. fo. 13.

for the estate of B. for terme of his owne life is higher than an estate for another mans life: And therefore if Tenant for life infeoffe him in the remainder for life, this is a surrender, and no forfeiture. And albeit an estate for terme of a mans own life be but one freehold, yet may seuerall freeholds in certaine cases be deriued out of the same, whereof our bookes are verie plentifull, and wherewith you may dispose your selues for a time. As if tenant for life maketh a Lease by Deed, or without Deed, to him in the remainder of reuersion, in taile or in fee, for the term of the life of him in the rem. or reuersion, and after he in the remainder taketh wife and dieth, his wife shall not be endowed, for tenant for life shal enioy the land again, for forfeiture it cannot be, for he in the rem' was partie, and surrender it cannot bee, forthat his whole estate was not giuen. 24.E.3.32.& 68.30.aſ.p.47 19.E.3.Sur.8. 13.R.2.Dow 95.7.H.6.3. pl7 Cur.18.E.3.48.

The heire maketh a lease for life, reseruing a rent, against whom the wife recouereth her dower, and dieth, the Lesse shall haue the land againe for his life, and the rent is reuiued. 7.H.5.4.

So it is, if Tenant for life take husband, and by Deed indented they make a Lease to him in the reuersion for the life of the husband, reserving a rent, this is neither forfeiture, nor absolute surrender, for the cause aforesaid, and the reseruation is good. 29.Aſſ.p.64.

B. seised of lands in fee, taketh to wife I.S. and infeoffe C. in fee, who take Alice to wife: C. dieth, Alice is endowed; B dieth, I.S. recouereth dower against Alice, and dieth, Alice shall enioy the Land againe during her life. 8.E.2.aſſ.393.45.E.3.13.

A. and (a) B. Ioyntenants, A. for life, and B. in fee, ioyne in a lease for life, A. hath a reuersion, and shall ioyne in an Action of waſt. (a) 2.H.5.7.13.H.7.15. 18.E.2.Br.835.F.N.B.59.f

Tenant for (b) life, and he in the reuersion ioyne in a lease for life, it is said, that they shall ioyne in an Action of waſt, and that the Lesse for life shall recouer the place wasted, and he in reuersion, dammages. (b) 27.H.8.13.13 H.7.15. 22.H.6.24.17.E.3.9.b.

If a man grant (c) an estate to a woman dum sola fuit, or durante viduitate, or quam diu se bene gesserit, or to a man and a woman during the couerture, or as long as the grantee dwell in such a house, or so long as he pay x.l. &c. or vntill the grantee bee promoted to a Benefice, or for any like incertaine time, which time, as Bracton saith, is tempus indeterminatum: In all these cases, if it be of lands or tenements, the lesse hath in iudgement of law an estate for life determinable, if liuerie be made; and if it be of rents aduowsons, or any other thing that lie in grant, he hath a like estate for life by the deliuerie of the Deed, and in count or pleading he shall alledge the lease, and conclude, that by force thereof hee was seised generally for terme of his life. (c) 37.H.6.27.26.E.3.69. 14.E.2.Grant 92.3.E.3.15. 14.H.8.13. Bract.li.4.fi207 Fl.l.3.c.12

If a man make a lease of a Mannor, that at the time of the lease made is worth xx.l. per annum, to another vntil C.l be paid, in this case because the annual profits of the manor are incertain, he hath an estate for life, if liuery be made determinable vpon the leuying of the C.l. But if a man grant a rent of xx. l. p añ vntill C.l. be payd, there he hath an estate for fiue yeares, for there it is certaine, and depend vpon no incertaintie. And yet in some cases a man shal haue an incertaine interest in lands or tenements, and yet neither an estate for life, for yeares, or at will. As if a man by his will in writing, deuise his lands to his Executors for payment of debts, and vntill his debts be paid; in this case the Executors haue but a Chattell, and an incertaine interest in the land vntill his debts be paid; for if they should haue it for their liues, then by their death their estate should cease, and the debts vnpaid: but being a Chattell, it shall goe to the Executors of Executors for the payment of his debts; and so note a diuersitie betweene a deuise and a conueyance at the Common Law, in his life time. And tenant by Statute merchant, by Statute staple, and by Elegit, haue incertaine interests in lands or tenements, and yet they haue but Chattels, and no freehold, whose estates are created by diuers Acts of Parliament, whereof more shall be said hereafter. And so haue Gardeins in Chinalry which hold ouer for single or double value incertaine interests, and yet but Chattels. 33.Aſſ p.2. Li.8.fo.9.Manning's case. 3.H.7.13.27.H.8.5. 14.H.8.13.21.Aſſ p.8.

If one grant lands or tenements, reuersions, remainder, rents, aduowsons, commons, or the like, and expresse or limit no estate, the lesse or grantee (due ceremonies requisite by Law being performed) hath an estate for life. The same law is of a declaration of a vse. A man may haue an estate for terme of life determinable at will; As if the King doth grant an office to one at will, and grant a rent to him for the exercise of his office for terme of his life, this is determinable vpon the determination of the office. V.Sect.381.7.Aſſ pl.1. 13.El.Dyer 302. 7.E.4.23.

A. tenant in fee simple make a lease of lands to B. to haue and to hold to B. for terme of life, without mentioning for whose life it shall be, it shall be deemed for terme of the life of the lesse, for it shall be taken most strongly against the lessor, and as hath beene said, an estate for a mans owne life is higher then for the life of another. But if tenant in taile make such a lease without expressing for whose life, this shall be taken but for the life of the lessor, for two Reasons. V.Sect.381.

First, when the construction of any act is left to the Law, the Law which abhorreth iniurie and wrong will neuer so construe it, as it shall worke a wrong: and in this case, if by construction it should be for the life of the lesse, then should the estate taile be discontinued, and a new reuersion gained by wrong: but if it be construed for the life of the tenant in taile, then no wrong is wrought. And it is a generall rule, that whensoeuer the words of a Deed, or of the parties without Deed may haue a double entendement, and the one standeth with law and

4.E.2.Waſt.11. 17.E.3.7.

right, and the other is wrongfull and againſt Law, the intendement that ſtandeth with Law, ſhall be taken.

Secondly, The Law more reſpecteth a leſſer eſtate by right, then a larger eſtate by wrong, as if tenant for life in remainder diſſeiſe tenant for life, now he hath a fee ſimple, but if Tenant for life die, now is his wrongfull eſtate in fee by iudgement in law changed to a rightfull eſtate for life.

19.H.6.7.H.4.32. 6.E.3 17.7.E.3.66. 18.E.3.60.23.E.3.ca.1.&c. 11.H.4.44. 38.E.3.23.24.

If a man retaine a ſeruant generally without expreſſing any time, the Law ſhall conſtrue it to be for one yeare, for that retainer is according to Law. Vide 23.E.3.cap.1.&c. To ſhut vp this point it hath beene adiudged, that where Tenant in taile made a leaſe to another for terme of life generally, and after releaſed to the leſſee and his heires, albeit betweene the Tenant in taile, and him a fee ſimple paſſed, yet after the death of the leſſee, the entrie of the iſſue in taile was lawfull; which could not bee, if it had been a leaſe for the life of the leſſee, for then by the releaſe it had bene a diſcontinuance executed. But let vs now returne to Littleton.

Section 57.

¶ This and the reſt that follow in this chapter concerning the deſcription of Feoffor and feoffee, Donor and Donee, and Leſſor and Leſſee are euident.

¶ *Et eſt aſcauoir que il y ad le Feoffor, & le Feoffee, &c. Vide Sect.* 2. where a light touch is giuen who may purchaſe, now ſomewhat is to be ſaid, who haue abilitie to enfeoffe, &c. and may be a Feoffor, Donor, Leſſor, &c. Whoſoeuer is diſabled by the Common Law to take, is diſabled to infeoffe, &c. But many that haue capacitie to take, haue no abilitie to infeoffe, &c. As men attainted of Treaſon, Felonie, or of a Premunire, Aliens borne, the Kings Aſſiſaines, Traitors, Felons, &c. he that hath offended againſt the Statutes of Premunire, after the offences committed if Attainders enſue, Ideots, Madmen, a man deafe, dumbe, and blind from his Natiuitie, a Fem, Couert, an Infant, a man by dures: for the feoffements, &c. of theſe may bee auoided. But an Hereticke, though he be conuicted of hereſie, a Leper remoued by the Kings writ from the ſocietie of men, Baſtards, a man Deafe, Dumbe, or blinde, ſo that hee hath vnderſtanding and ſound memorie, albeit he expreſſe his intention by ſignes, Aſſiſaine of a common

Bracton.lib.5.fol.415. Britton.fol.88. Fle.lib.3. cap.3. & lib.6.cap.39.40.

2.H.5.cap.7. which is repealed Doct. & Stud.lib.2.cap.29.

¶ Et ē aſcauoire que il y ad le Feoffor & le Feoffee, Donor & le Donee, & Leſſor & le Leſſee. Le feoffor eſt proprim̄ lou home enfeoffa vn auter en aſcuns terres ou tenements en fee ſimple, celuy que fiſt le feoffement eſt appel feoffour, & celuy a que le feoffmēt eſt fait, eſt appel feoffee. Et le donour eſt proprement lou vn home done certaine terres ou tenements a vn auter en le taile, celuy que fiſt le done eſt appel le donor, & celuy a que le done eſt fait, eſt appel le Donee. Et le Leſſor eſt proprement lou vn home leſſa a vn auter certaine terres ou tenements pur terme de vie, ou pur terme des ans, ou a tener a volunt celuy que fiſt le leas eſt appell leſ-

And it is to be vnderſtood, that there is Feffor and Feffee, Donor and Donee, Leſſor and Leſſee, Feoffor is properly where a man enfeoffes another, in any Lands or Tenements in Fee ſimple, hee which maketh the feoffment is called the Feoffor, and he to whom the feoffment is made, is called the Feoffee. And the Donor is properly where a man giueth certaine lands or tenements to another in taile, he which maketh the gift, is called the Donor, & he to whom the gift is made, is called the Donee. And the Leſſor is properly where a man letteth to another lands or tenements for terme of life or for terme of yeares, or to hold at will: Hee which maketh the Leaſe is called Leſſor,

for

for ꝑ celuy a que le leas eſt fait, eſt appel Leſſee. Et chelcun que ad eſtate en aſcun terres ou tenements pur terme de ſa vie ou pur terme dauter vie, eſt appell tenant de franktenement, ꝑ nul auter de meindre eſtat poit auer franktenement, mes ceux de greinder eſtate ont franktenement car ceſtuy en fee ſimple ad franktenement, ꝑ celuy en le taile ad franktenement, ꝛc.

and hee to whom the Leaſe is made, is called Leſſee. And euery one which hath an eſtate in any Land or Tenements for terme of his owne or another mans life, is called tenant of freehold, and none other of a Leſſer eſtate can haue a Freehold, but they of a greater Eſtate haue a Freehold; For hee in Fee ſimple hath a Freehold, and Tenant in taile, hath a Freehold, &c.

perſon before entre, or the like may infeoffe, &c.

(a) All feoffments, gifts, grants, and leaſes by Biſhops, albeit they bee confirmed by the Deane and Chapter, by any of the Colledges or Halls in either of the Vniuerſities, or elſewhere, Deans and Chapters, Maſter or Gardein of any Hoſpitall, parſon, Vicar, or any other hauing Spirituall or Eccleſiaſticall liuing, are alſo to bee auoyded, (b) and all the ſayd bodies politique or corporate, are by the Statutes of the Realme diſabled to make any conueyances to the King, or to any other, as it hath bin adiudged: which ſtatutes haue been made ſince Littlet. wrote.

It is preuided (c) by the Statute of Magna Charta, quod nullus liber homo det de cætero amplius alicui de terra ſua quam vt de reſiduo terræ ſuæ poſſet ſufficienter fieri domino feodi ſeruitium ei debitum quod pertinet ad feodum illud. Vpon which act I haue heard great queſtion (d) made, whether the feoffment made againſt that Statute were voidable or no, and ſome haue ſaid, that the Statute intended not to auoid the feoffment, but implicite to direct the tenure, viz that the tenant ſhould not infeoffe another of parcell to hold of the chiefe Lord (that is of the next Lord) but to hold of himſelfe, and then the Lord may diſtraine in euery part for his whole ſeruice without any preiudice vnto him. But this opinion is againſt (e) the authoritie of our Bookes, and againſt the ſaid Statute of Magna Charta. For firſt it is agreed in 10. H. 7. that aſwel before the Statute as after a tenant which held two Acres might haue alienen one of the Acres to hold of him, and notwithſtanding the Lord might haue diſtrained in which of the Acres he would for his whole ſeruices: and reaſon teacheth that before that Statute a tenant could not haue alienen parcell to hold of the chiefe Lord; For the Seigniory of the Lord was intire, for the which the Lord might diſtraine in the whole or in any part, and which the Tenant by his owne Act cannot diuide to the preiudice of the Lord to barre him to diſtraine in any part for his Seruices, as hee ſhould doe, if hee ſhould enfeoffe another of parcell to hold of the chiefe Lord. But the Tenant might haue made a Feoffment of the whole to hold of the chiefe Lord, for there no preiudice inſued to the Lord. Others haue ſaid, and they ſaid truly, that the intention of the Statute was that the Tenant could not alien parcell (which might turne to the preiudice of the Lord) without his aſſent, and this appeareth cleerely by the Mirror. And by this Statute the King tooke benefit to haue a fine for his licence, before which Statute no fine for alienation was due to the King. For it is (f) adiudged that for an alienation in time of Henry the ſecond, no fine was due, and it appeareth in our Bookes, that if an alienation had beene made before 20. H. 3. no fine was due to the King for alienation: Now it is to be obſerued; that oftentimes for the better vnderſtanding of our Bookes, the aduiſed Reader muſt take light from Hiſtorie and Chronicles eſpecially for diſtinction of times. And therefore Matthew Paris (who in his Chronicle reciteth Magna Charta) teſtifieth that King Henry the third by euill counſell (and eſpecially as the truth was of Hubert de Burgo then chiefe Iuſtice) ſought to auoide the great Charter firſt granted by his Father King Iohn, and afterward granted and confirmed by himſelfe in the ninth of Henry the third, for that as he ſaid King Iohn did grant it by Dures, and that he himſelfe was within age when he granted and confirmed it. But foraſmuch as afterwards the ſaid King Henry the third, in the twentieth yeare of his Raigne, at what time he was nine and twentie yeare old, did grant and confirme the ſaid great Charter, for that cauſe to put out all ſcruples in the twentieth yeare of Henry the third named, albeit in law the Kings Charter granted in the ninth yeare of Henry the third, was of force and validitie notwithſtanding his nonage, for that, in iudgement of Law the King, as King, cannot be ſaid to be a Mi-

(a) 32. *H.* 8. *cap.* 28. 1. *El.* not printed. 13. *El. ca.* 10. 14. *El. ca.* 11. 18. *El. ca* 20. *Ia. ca.*

(b) *Lib.* 4. *fo.* 76. 120. *lib.* 5. *fo.* 6. 14. *Li.* 6. *fo.* 37. *li.* 11. *fo* 67. *Magdalen Colledge caſe. Vide Leſt. de W.* 2. *ca.* 41.

(c) *Magna Charta cap.* 32. *Mirror. cap.* 5. §. 2. *Glanvil. lib.* 7. *cap.* 1. *Bract. lib.* 1. *Britton.* 88. *&c. Fleta lib.* 3 *cap.* 3.

(d) *Vide an excellent declaration hereof inter aduiſers coram Rege. Trin. E.* 1. *fol.* 2 *in Theſa. Nott. & Derb.*

(e) *Bract lib.* 1. 10. *H.* 7. *fol.* 10. *b.* 33. *E.* 3. *auowry* 255. *Stanf. prer. fol.* 29. 8. *E.* 4 12.

Mirr. cap. 5 §. 2. *Fleta. lib.* 3. *cap.* 3. (f) 26. *Aſſ. p.* 37. 20 *Aſſ. p.* 17 20. *E.* 3. *auowrie* 126. 34. *E.* 3. *cap.* 15. *Vide Stanf.* 29. 30. *Matt. Parn. Walſingham* 37. 39.

Vide 5. *H.* 3. *Mordanc.* 53. *Magna Charta there vouched, which was the Charter of King Iohn, for it was cited before.* 9. *H.* 3.

nor, for when the Royall Bodie Politique of the King doth mete with the naturall capacitie in one person, the whole Bodie shall haue the qualitie of the Royall Politique, which is the greater and more worthy, and wherein is no Minoritie. For Omne maius trahit ad se quod est minus. And it is to bee obserued, that no Record can bee found, that either a licence of alienation was sued or pardon for alienation was obtained for an alienation without licence at any time before the twentieth yeare of Henne the third, and it is holden in the twentieth of Edward the third, that a licence for alienation grew by this Statute.

20. Ass. pl. 17. by Skipwith.

Now in the case of a common person it was the common opinion, that if the tenant had aliened any parcell contrary to the said act, that he himselfe was bound by his owne act, but that his heire might haue auoyded it; and in the Kings Case many held the same opinion. For Britton saith, Ne Countes, ne Barons, ne Chiualer, ne Seriants, que teignont en chiefe de nous ne purr' my dismember nous fees sanus licence: que nous ne puissent per droit engettre les purchasors, &c. And herewith agreeth Fleta, and our Bookes. But now by the Statute 1. E. 3. cap. 12. & 34. E. 3. cap. 15. although the Kings tenant in chiefe, or by grand seriantie doe alien all or any part without licence, yet is there not any forfeiture of the same, but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in 1. E. 3. that complaint was made that land holden of the King in Capite, being alienen without licence was seised as forfeited. And in the case of a common person, the Statute of 18. E. 1. De quia emptores terrarum hath made it cleere, for this hath in effect as to the common persons taken away the said Statute of Magna Charta cap. 32. for thereby it is prouided, Quod liceat vnicuique libero homini terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita quod feoffatus teneat, &c. de Capitali Domino. And herein are diuers notable points to bee obserued. First, that this word liceat proueth that the tenant could not, or at least wayes was in danger to alien parcell of his tenancie, &c. vpon the said Act of Magna Charta. Secondly, that vpon the feoffment of the whole, the tenant shall hold of the chiefe Lord. Thirdly, that the tenant might infeoffe one of part to hold pro perticula of the chiefe Lord. But this Act (the King being not named) doth not take away the Kings fine due to him by the Statute of Magna Charta.

Britton. fol. 28. 88. 186. 187. 245. 247. Prer. Regu cap. 7. Fleta lib. 6. cap. 29. acc. 20. E. 3. Ass. 122. 29. Ass. pl. 19. 14. E. 3. quare imped. 45. 14. H. 4. 2. 3. 9. E. 3. fol. 26. 1 E. 3 cap. 12. 34. E. 3. ca. 15. lib. 2. fol. 81. 82. in Seignior Cromwels case.

Regist. ins les brewes de oner and pro rata portione.

¶ *Franktenement.* Here it appeareth that tenant in fee, tenant in taile, and tenant for life are said to haue a franktenement, a freehold, so called because it doth distinguish it from tearmes of yeares, Chattels vpon incertaine interests, lands in Villenage or Customary, or Coppihold lands. Liberum autem tenementum dicitur ad differentiam Villenagij, & villanorum qui tenent Villenagium quia non habent actionem nec assisam, &c. item quod sit suum & non alienum, hoc est si teneat nomine alieno vt firmarius & ad terminum vel sicut creditor ad vadium. And note that tenant by Statute Merchant, Statute staple or elegit are said to hold land Vt liberum tenementum vntill their debt be paid, and yet in troth they (as hath beene said) haue no freehold, but a Chattle, which shall goe to the Executors, and the Executors also if they be ousted shall haue an Assise. But (vt) is similitudinarie, because they shall by the statutes haue an Assise as tenant of the freehold shall haue, and to that respect hath a similitude of a freehold, but Nullum simile est idem.

Bracton. lib. 4. fol. 224. Britton. cap. 32. & 47. Bracton. lib. 4. fol. 22. Regist. indic. 68. 73.

28. Ass. p. 7. W. 2. cap. 18. Statut. de mercatoribus anno 13. E. 1. 27. E. 3. cap. 9. 23. H. 8. cap. 6. F. N. B. 178. 7.

Chap. 7. Sect. 58.

Tenant for tearme of yeares.

¶ *Lou home lessa terres &c. lessa* and Lease is (a) deriued of the Saxon word leapum, or leasum, for that the Lesse commeth in by lawfull meanes (b) and dimittere is in French layſſer to depart with or forgoe.

(a) Mirror. cap. 2. §. 17. Bracton. lib. 2. cap. 26. & lib. 4 fol. 220. Fleta. lib. 3. cap. 12. & lib. 5. cap. 34.
(b) For the word (dimitto) See Sect. 531.

When Littleton wrote many persons might make Leases for yeares, or for life or

¶ *Tenāt pur terme dans ē lou hōe lessa terres ou tenements a vn auter pur terme de certaine ans solonque le number des ans que est accord perenter le les-*

¶ Tenant for tearme of yeares is, where a man letteth Lands or Tenements to another for tearme of certaine yeares after the number of yeares that is accorded between the

for

for le le leſſee. Et quant le leſſee enter per force del leas, donque il eſt tenant pur terme des ans. Et ſi le leſſor en tiel caſe reſerue a luy vn annuall rent ſur tiel leas il poit eſlier a diſtrainer pur le rent en les tenements leſſes, ou il poit auer vn action de debt pur les arrerages enuerz le leſſee. Mes en tiel caſe il couient que le leſſour ſoit ſeiſie de meſmes le tenemẽts al temps del leas, car il eſt bone plee pur le leſſee adire, que le leſſor nauoit riens en les tenemẽts al tẽps de le leas ſinon que le leas ſoit fait per fait endent, en quel caſe tiel plee donque ne giſt en le bouch le leſſee a pleader.

Leſſor and the Leſſee, and when the Leſſee entreth by force of the Leaſe, then is hee tenant for tearme of yeares, and if the Leſſor in ſuch caſe reſerue to him a yearely Rent vpon ſuch Leaſe, hee may chuſe for to diſtraine for the Rent in the Tenements letten, or elſe he may haue an Action of debt for the Arrerages againſt the Leſſee. But in ſuch caſe it behooueth that the Leſſor be ſeiſed in the ſame Tenements at the time of his leaſe, for it is a good plee for the Leſſee to ſay, that the Leſſor had nothing in the tenements at the time of the leaſe, except the leaſe bee made by deed, indented, in which caſe ſuch plee lieth not for the Leſſee to plead.

liues at their will and pleaſure, which now cannot make them firme in Law. And ſome perſons may now make leaſes for yeares, or for life or liues (obſeruing due incidents) firme and good in law who of themſelues could not ſo doe when Littleton wrote, and this by force of diuers Acts of Parliament (c) as namely 32. H. 8. 1. Eliz. 13. Eliz. 18. Eliz. and 3. Iac. Regis of which ſtatutes one is inabling, and the reſt are diſabling. When Littleton wrote, Biſhoppes with the confirmation of the Deane and Chapter, Maſter & Fellowes of any Colledge, Deanes and Chapters, Maſter or Gardian of any Hoſpitall, and his Brethren, Parſon or Vicar, with the conſent of the Patrone and Ordinary, Archdeacon, Prebend, or any other bodie Politique Spirituall and Eccleſiaſticall (Concurrentibus hijs quæ in iure requiruntur) might haue made Leaſes for liues or yeares without limitation or ſtint. And ſo might they haue made gifts in tailes or ſtates in fee at their will and pleaſure, whereupon not only great decay of Diuine Seruice, but Dilapidations and other inconueniences enſued, and therefore they were diſabled and reſtrained by the ſaid Acts of 1. Eliz. 13. Eliz. and 3. Iac. Regis to make any eſtate or Conueyance to the King at all or to the ſubiect, but there is excepted out of the reſtraint or diſabilitie, leaſes for three liues, or one and twentie yeares; with ſuch reſeruation of Rent, and with ſuch other prouiſions and limitations as hereafter ſhall appeare. Alſo they may make grants of ancient Offices of neceſſitie with ancient fees Concurrentibus hijs quæ in iure requiruntur, for theſe grants are not within the ſtatute of 32. H. 8. but by conſtruction, they are not reſtrained by the ſtatutes of 1. Eliz. or 13. Eliz. becauſe theſe ancient Offices be of neceſſitie, and with the ancient fees, and ſo no diminution of reuenue.

(c) 32. H. 8. ca. 28. 1. Eliz. not printed but in the 2. impreſſion. 13. Eliz. cap. 10. 18. Eliz. cap. 6. 3. Iac. cap. 3.

There be three kinds of perſons, that at this day may make leaſes for three liues, &c. in ſuch ſort as hereafter is expreſſed which could not ſo doe when Littleton wrote. Viz. Firſt, Any perſon ſeiſed of an eſtate taile in his owne right. Secondly, Any perſon ſeiſed of an eſtate in fee ſimple in the right of his Church. Thirdly, Any husband and wife ſeiſed of any eſtate of inheritance in fee ſimple, or fee taile in the right of his wife, or ioyntly with his wife before the couerture or after, viz. the tenant in taile, by deed to bind his iſſues in taile, but not the reuerſion or remainder, the Biſhop, &c. by deed without the Deane and Chapter to bind his ſucceſſors, the husband and wife by deed to bind the wife and her and their heires, and theſe are made good by the ſtatute of 32. H. 8. which inableth them thereunto. But to the making good of ſuch leaſes by the ſaid ſtatute there are nine things neceſſarily to be obſerued belonging to them all, and ſome other to ſome of them in particular.

Lib. 5. fol. 14. caſe de Eccleſiaſticall perſons. Lib. 11. fol. 66 Magdalen Colledge caſe. L. eueſque de Sarums caſe lib. 10. fol. 60. 61.

First, The leaſe muſt be made by Deed indented, and not by Deed, Poll, or by Patroll.

Lib. 5. fol. 6. Seig Mountieyes caſe.

Secondly, It muſt be made to begin from the day of the making thereof, or from the making thereof.

Thirdly,

Thirdly, If there be an old leafe in being, it muſt be ſurrendred or expired, or ended within a yeare of the making of the leafe, and the ſurrender muſt be abſolute and not conditionall.

Lib.5. fol.2. Elmers caſe.

Fourthly, There muſt not bee a double Leaſe in beeing at one time, as if a Leaſe for yeares bee made according to the ſtatute, hee in the reuerſion cannot expulſe the Leſſee, and make a Leaſe for life or liues according to the ſtatute, nor è conuerſo, for the words of the ſtatute be to make a leaſe for three liues, or one and twentie yeares, ſo as one or the other may be made, and not both.

Fiftly, It muſt not exceed three liues, or one and twentie yeares, from the making of it, but it may be for a leſſer terme or fewer liues.

Sixtly, It muſt bee of Lands, Tenements, or Hereditaments, Mannrable or Corporall, which are neceſſary to be letten, and whereout a rent by law may be reſerued, and not (d) of things that lie in grant, as Aduowſons, Faires, Markets, Franchiſes, and the like whereout a rent cannot be reſerued.

(d) Lib.5.fol.2. Iewels caſe. 17.E.3.75.9. Aſſ.24.14.E.3. Scire facias 22. 10.H.6.2. 3.H.6.21.

Seuenthly, It muſt be of Lands or tenements which haue moſt commonly beene letten to farme, or occupied by the Farmers thereof by the ſpace of 20. yeares next before the leaſe made, ſo as if it be letten for 11. yeares at one or ſeuerall times within thoſe 20. yeares it is ſufficient. A grant (e) by copie of Court roll in fee for life or yeares is a ſufficient letting to farme within this ſtatute, for he is but tenant at will according to the cuſtome, & ſo it is of a leaſe at will by the Common Law, but thoſe lettings to farme muſt be made by ſome ſeiſed of an eſtate of Inheritance, & not by a Gardein in Chiualrie, tenant by the curteſie, tenant in dower or the like.

(e) Lib.6. fol.37. Deane and Chapter of Worceſter caſe.

Eightly, That vpon euery ſuch leaſe there be reſerued yearely during the ſame leaſe due and payable to the Leſſors their heires and Succeſſors, &c. ſo much yearely farme or rent, or more, as hath beene moſt accuſtomably yeilded or paid for the lands, &c. within twentie yeares next before ſuch leaſe made. Hereby firſt it appeareth (as hath beene ſaid) that nothing can be demiſed by Authoritie of this act, but that whereout a rent may be lawfully reſerued. Secondly, That where not only a yearely rent was formerly reſerued, but things not annuall, as heriots; or any fine or other profit at or vpon the death of the farmer, yet if the yearely rent be reſerued vpon a leaſe made by force of this ſtatute, it ſufficeth by the expreſſe words of the Act. Thirdly, If he reſerue more then the accuſtomable rent it is good alſo by the expreſſe letter of the Act; but if twentie Acres of land haue beene accuſtomably letten, and a leaſe is made of thoſe twentie, and of owne Acre which was not accuſtomably letten, reſeruing the accuſtomable yearely Rent, and ſo much more as exceed the value of the other Acre, this leaſe is not warranted by the Act, for that the accuſtomable Rent is not reſerued, ſeeing part was not accuſtomeably letten, and the Rent iſſueth out of the whole. Fourthly, If tenant in taile let part of the land accuſtomably letten, and reſerue a Rent pro rata, or more, this is good for that is in ſubſtance the accuſtomable Rent. Fiftly, If two Coperceners be tenant in taile of twentie Acres euery one of equall value, and accuſtomably letten, and they make partition, ſo as each haue ten Acres, they may make leaſes of their ſeuerall parts each of them, reſeruing the halfe of the accuſtomeable rent. Sixtly, If the accuſtomeable Rent had beene payable at foure dayes or Feaſts of the Yeare, yet if it be reſerued yearely payable at one Feaſt, it is ſufficient, for the words of the ſtatute be, reſerued yearely.

Lib.6. fol.37.38. Deane and Chapt. of Worceſter Caſe.

Lib.5. fol.5. Seignior Mountioyes Caſe, l.b.6. fol.37.

Lord Mountioyes Caſe vbi ſupra.

Deane and Chapter of Worc. Caſe. Vbi ſupra.

Ninthly, Nor to any leaſe to be made without impeachment of waſte, therefore if a Leaſe be made for life, the remainder for life, &c. this is not warranted by the ſtatute, becauſe it is diſpuniſhable of waſte. But if a leaſe bee made to one during three liues this is good, for the occupant if any happen, ſhall be puniſhed for waſte. The words of the ſtatute be (ſeiſed in the right of his Church) yet a Biſhop that is ſeiſed iure Epiſcopatus, a Deane of his ſole poſſeſſions in iure Decanatus, an Archdeacon in iure Archidiaconatus, a Prebendarie and the like are within the ſtatute, for euery of them generally is ſeiſed in iure Eccleſiæ.

Deane and Chapter of Worc. Caſe. Vbi ſupra.

But a Parſon and Vicar are excepted out of the ſtatute of 32.H.8. and therefore if either of them make a leaſe for three liues, &c. of lands accuſtomeably letten, reſeruing the accuſtomed Rent, it muſt be alſo confirmed by the Patrone and Ordinarie, becauſe it is excepted out of 32.H.8. and not reſtrained by the ſtatutes of primo or 13.Eliz. And what hath beene ſaid concerning a leaſe for three liues, doth hold for a leaſe for one and twentie yeares.

3.E.6.1. Mar.tit.leaſes Bre.62.

Thus much ſhall ſuffice to haue ſpoken of the inabling ſtatute of 32.H.8. the better to inable the Reader to vnderſtand both this and that which follow. Now to ſpeake ſomewhat of the diſabling Statutes of 1. Eliz. and 13. Eliz. the words of the exception out of the reſtraint and diſabilitie of 1. Eliz. are, Other than for the terme of twentie one yeares, or three liues, from ſuch time as any ſuch grant or aſſurance ſhall bee giuen, whereupon the old and accuſtomed yearely rent, or more, ſhall be reſerued: And to that effect is the exception in the Statute of 13. Eliz. Firſt, It is to be vnderſtood, that neither of theſe diſabling Acts, nor any other, doe in any ſort alter or change the inabling Statute of 32.H.8. but leaueth it for a patterne in many things for leaſes to be made by others. Secondly, It is to be knowne, that no Leaſe made according to the exception of 1. Eliz. or 13. Eliz. and not warranted by the Statute of 32.H.8. if it be made by

by a Bishop, or any sole Corporation, but it must be confirmed by the Deanes and Chapters, or others that haue interest, as hath beene said in the case of the Parson and Vicar, but examples doe illustrate. If a Bishop make a lease for 21. yeares, and all those yeares being spent sauing three or more; yet may the Bishop make a new lease to another for twentie one yeares, to begin from the making, according to the exception of the Statute, but not a Lease for life or liues, as hath beene said, and this concurrent Lease hath beene resolued to be good, as well vpon the exception of 1. Eliz. in the case of Bishops, as vpon 13. Eliz. which extend to spirituall and ecclesiasticall Corporations, aggregate of many, as Deanes and Chapters, &c. which 32. H. 8. did not: but in the case of the concurrent lease, in the case of the Bishop it must be confirmed. Also the exception of 1. Eliz. and 13. Eliz. doth differ from the statute of 32. H. 8. for the leases for yeares to bee made according to the exceptions of the statutes of 1. and 13. Eliz. must beginne from the making, and not from the day of the making, but by force of 32. H. 8. from the day of the making. And although the statutes of the first or thirteenth of Eliz. doe not appoint the lease to be made by writing, yet must it therein and in the other eight properties or qualities before mentioned and required by 32. H. 8. follow the paterne thereof (the concurrent lease only excepte). Although the exception in 1. and 13. Eliz. concerning the accustomed rent is more generall then that of 32. H. 8. and there is not any prouision for leases made disputnishable of waste, &c. yet must the paterne of 32. H. 8. be followed: for leases without impeachment of waste made by such Spirituall and Ecclesiasticall persons are vnreasonable and causes of dilapidations. Thus much haue I thought good to lead the studious Reader by the hand, and to conduct him in the right way. And to put all these things together vpon consideration had of all the statutes, which otherwise might haue prima facie seemed to him a diffuse and darke labyrinth. And albeit it be prouided by the said Acts of 1. and 13. Eliz. that all grants, &c. leases, &c. made, &c. (other then leases for three liues, or one and twentie yeares according to those Acts) should be vtterly void and of none effect, to all intents constructions and purposes, yet grants, or leases, &c. not warranted by those acts are not void, but good against the Lessor, if it be a sole Corporation, or so long as the Deane or other head of the Corporation remaine; if it be a Corporation aggregate of many, for the statute was made in benefit of the successor. But let vs now returne to our Author.

Lib. 3. *fo.* 59. 60. *Lincolne Colledge case. P.* 39. *Eliz. Inter Hunt. & Singleton. ibidem.*

¶ *Home lessa.* Here Littleton putteth this case where one letteth, &c. It is therefore necessary to be seene what the Law is where diuers ioyne in a Lease. If the tenant of the Land, and a stranger which hath nothing in the Land ioyne in a lease for yeares by Deed indented of one and the selfe-same land, this is the Lease of the tenant only, and the confirmation of the stranger and yet the Lease as to the stranger worketh by conclusion.

Vide Sect. 346. 13. *H.* 4. 1. 5. *E.* 4. 4. *a.* 27. *H.* 8. 16.

If two seuerall tenants of seuerall lands, ioyne in a lease for yeares by Deede indented, these be seuerall Leases and seuerall Confirmations of each of them, from whom no interest passeth, and worke not by way of conclusion in any sort; because seuerall interests passe from them. B. tenant for life of C. and he in the remainder or reuersion in fee, hauing seuerall estates in the one and the same Land ioyne in a lease for yeares by Deede indented, this demise shall worke in this sort, during the life of C. it is the Lease of B. and Confirmation of him in the reuersion or remainder, and after the decease of C. it is the Lease of him in the reuersion or remainder, and the Confirmation of B. for seeing the Lessors haue seuerall estates, the Law shall construe the Lease to moue out of both their estates respectiuely, and euery one to let that which he lawfully may let, and not to be the lease only of tenant for life, and the Confirmation of him in the remainder or reuersion, neither is there any conclusion in this case, as shall be said hereafter. Tenant for life and he in the remainder in fee, made a lease for yeares by Deed indented, the Lessee was ejected, and brought an Ejectione firme, and declared vpon a demise made by tenant for life and him in remainder, and vpon not guilty pleaded this speciall matter was found and that tenant for life was liuing and it was adiudged (a) against the pl', for during the life of the tenant (as hath beene said) it is the Lease of the tenant for life, and therefore during his life he ought to haue declared of a Lease made by him, and after his decease he ought to declare of a Lease made by him in remainder. (b) And the Deed indented could be no Estoppell in this case, because there passed an interest from them both. And whensoeuer any interest passeth from the partie there can be no Estoppell against him, and (c) so it was adiudged. Hereby you shall vnderstand your bookes the better which treate of these matters; and accordingly it was adiudged that where tenant in taile and he in the remainder in fee ioyned in a grant of a rent charge by Deed in fee, and after tenant in taile died without issue, the grantee distreyned and auowed by force of a graunt from him in the remainder and vpon non concessit, the Jury found the speciall matter, and it was adiudged for the auowant; for euery one granted according to his estate and interest.

(a) 27. *H.* 8. *fo.* 13. *a.* 13. *H.* 7. 14. 2. *H.* 5. 7. *Lib.* 1. *fol.* 76. *Bredons Case.*

(b) *Mich.* 36. & 37. *Eliz. in the Kings Bench. Vide Mich.* 6. & 7. *Eliz. Dier* 234. 235.

(c) *Hill.* 44. *Eliz. Rot.* 1459. *in Communi Banco inter Elliot & Comit.*

Leases for liues or yeares are of three natures, some be good in Law; some be voydable by

entrie, and some voide without entrie. Of such as be good in Law, some be good at the Common Law as made by tenant in fee whereof Littleton here putteth his case, some by Act of Parliament, as tenant in taile, a Bishop seised in fee in the right of his Church alone without his chapter, A man seised in fee simple or fee taile in the right of his wife together with his wife (as hath beene said) may by deeds indented make Leases for 21. yeares or three liues in such manner and forme as hath beene said and by the Statute (d) is limitted; all which were voydable by the Common Law when Littleton wrote, and now are made good by Parliament.

(d) 32.H.8.cap.28.

An infant seised of Land holden in Socage, may by custome make a lease at his age of 15. yeares, and shall binde him, which Lease was voydable by the Common Law; Voydable, some by the Common Law, after the death of the leasor as of tenant in taile a Bishop, &c. Or after the death of the husband (intended of Leases not warranted by the said statute of 32.H.8.) Some voydable by Act of Parliament, as by a Bishop though it be confirmed by Deane and Chapter, if it be not warranted by the Statute of 32.H.8. and so of a Deane and Chapter after the Death of the Deane; Some voydable at times by the lessor himselfe or his heires, as by an infant and the like. Some voyde in futuro, and some voide in presenti. In futuro as if a tenant in taile make a Lease for yeares and die without issue, it is voide, as to them in reuersion or remainder, though it be made (e) according to the said Statute. If a Prebend, Parson or Vicar make a Lease for yeares, it is voyde by death; if it be not according to the Statutes. Otherwise it is of a Lease for life for that is voydable, & sic de similibus.

(e) 33.H.8.Dier. lib.3.fo.59.60.in Lincolne Colledge case. Hunts case vouched.

Some voide in presenti as if one make a Lease for so many yeares as he shall liue, this is voide in presenti for the incertaintie. Et sic in similibus whereof Littleton himselfe will teach you next and immediately and I know you would now gladly heare him.

¶ *Pur terme.* Pro termino, Terminus **in the vnderstanding of the** Law doth not only signifie the limits and limitation of time, but also the estate and interest that passeth for that time. As if a man make a Lease for 21. yeares, and after make a lease to begin A fine & expiratione prædicti termini 21. annorum dimiss. and after the first Lease is surrendred, the second Lease shall begin presently, but if it had beene to begin Post finem & expirationem predict' 21. annorum, in that case although the first tearme had beene surrendred, yet the second lease should not begin, till after the 21. yeares be ended by effluxion of time, and so note the diuersitie betweene the terme for 21. yeares, and 21. yeares; and (f) herewith agreeth the Lord Pagets Case.

Pl.com.Wrotesl.198. 35.H.8.tit.exposition des parols 44. lib.1.fo.145.in Daucuperts case.

(f) Lib.1.fo.154.in the Rector of Chedingtons case.

(g) Words to make a lease be, demise, grant, to fearme let, betake, and whatsoeuer word amounteth to a grant may serue to make a lease. In the Kings case (h) this word Committo doth amount sometime to a grant, as when he saith Commisimus W.de B officium seneschalciæ, &c. quamdiu nobis placuerit, and by that word also he may make a lease: and (i) therefore a fortiori a common person by that word may doe the same.

(g) Vid.Sect.531.
(h) Regist.F.N.B.270.e.

(i) 8.H.6.34.

¶ *De certaine ans.* **For regularly in euery Lease for yeares the** terme must haue a certaine beginning, and a certaine end, and herewith (k) agreeth Bracton, terminus annorum certus debet esse & determinatus. And Littleton is here to bee vnderstood, first, that the yeares must be certaine when the Lease is to take effect in interest or possession. For before it takes effect in possession or interest, it may depend vpon an incertaintie, viz. vpon a possible contingent before it begin in possession, or interest, or vpon a limitation or condition subsequent. Secondly albeit there appeare no certainty of yeares in the lease, yet if by reference to a certaintie it may be made certaine it sufficeth, Quia id certum est quod certum reddi potest. For example of the first. If A. seised of lands in fee grant to B. that when B. payes to A. xx. shillings, that from thence forth he shall haue and occupie the land for 21. yeares, and after B. payes the xx. shillings, this is a good lease for 21. yeares from thenceforth. For the second if A. leaseth his land to B. for so many yeares as B. hath in the Mannor of Dale, and B. hath then a terme in the mannor of Dale for 10. yeares, this is a good lease by A. to B. of the land of A. for 10. yeares. If the parson of D. make a lease of his gleabe for so many yeares as hee shall be parson there, this cannot be made certaine by any meanes, for nothing is more vncertaine then the time of death. Terminus vitæ est incertus, & licet nihil certius sit morte, nihil tamen incertius est hora mortis. But if he make a lease for three yeares, and so from three yeares to three yeares, so long as he shall be parson, this is a good lease for 6. yeares, if he continue parson so long, first for three yeares, and after that for three yeares; and for the residue vncertaine.

(k) 14.H.8.14.3.Mar.leases Br.67. 2.Mar. ibid.67. Say & Fullers case, Pl.com. 273. & Weldens case ibid. 4.H.6.12. 21.H.7.38. Vid.le case del eueſque de Bathe, lib.6.fo.34.35. Bract.lib.2.ca.9. Vid.lib.1.fo.155.156. Rector de Chedingtons case.

Bracton lib.2.ca.9. So resolued Hill:26. Eliz. rot.935. in com. banco.

If a man maketh a lease to I.S. for so many yeares as I.N. shall name, this at the beginning is incertaine, but when I.N. hath named the yeares, then it is a good lease for so many yeares.

A man maketh a lease for 21. yeares if I.S. liue so long, this is a good lease for yeares, and yet is certaine in incertaintie, for the life of I.S. is incertaine. See many excellent cases concerning this matter put in the said case of the Bishop of Bathe and Wells. By the ancient Law of England for many respects a man could not haue made a lease aboue 40. yeares at the most, for then

Pl.com.Say & Fullers case. Mirror cap.2.§.17. & cap.5.§.1.

then was it said that by long leases many were prejudiced, and many times men disherited, but that ancient Law is antiquated.

In the eye of the Law any estate for life being as Littleton hath said an estate for Freehold, against whom a precipe quod reddat doth lye, is an higher and greater estate then a lease for yeares though it be for a Thousand or more which neuer are without suspition of fraude, and they were the lesse valuable, for that at the Common Law they were subiect vnto, and vnder the power of the tenant of the Freehold, the learning whereof standeth thus and is worthy to bee knowne. When Littleton wrote if a man had made a lease for yeares by writing, and he that had the Freehold had suffered himselfe to be impleaded in a reall action by collusion to barre the Lesse of his terme, and made default, &c. The Statute of Glouc' gaue the Lesse for yeares some remedy by way of receipt, and a triall whether the Demandant did moue the plea by good right or collusion, and if it were found by collusion then the termor should inioy his tearme, and the execution of the iudgement should stay vntill after the tearme ended. But this Statute extended not to 5. Cases. 1. If the lease were without writing for the words of this act are, (so that the termor may haue recouery by writ of Couenant.) 2. It extended not but to a recouery by default. 3. The termor could not be relieued by this statute, vnlesse he knew of the recouery and were receiued, &c. 4. By the better opinion of bookes, it extended not to tenants by Statute merchant, statute staple or elegit. 5. Not to garden. (l) But now the statute of 21 H.8. doth giue remedy in all the said cases saning the case of the gardian, and giueth them power to falsifie all manner of recoueries had against the tenants of the freehold vpon fained and vntrue titles, &c. Now the (m) statute saith that it was a doubt before that statute whither a Termor for yeares might falsifie or no, but yet it seemeth by the better opinion of bookes in so great varietie, that he hauing but a chattel, was not able by the Common Law to falsifie a couenous recouery of the freehold, because he could not haue the thing that was recouered. (a) And Thrning and Hankford doe hold that a gardian is not within the statute of Glouc.

*Lib.*11.*fo.*33.

(l) 21.*H.*8.*ca.*15.

(m) *That a termor might falsifie at the Common Law. Vid.*19.*E.*3. *Ass.*82. 21.*E.*3.1.7.*H*7.11.*b.* 1.*H.*7.9.*b. Pl.com.*83. 10.*E.*3.46. 19.*E.*3.*reseit* 112. *That he could not.* 30.*H.*6. *Fauxer recouery* 9. 43.*Ass.*41. 26.*H.*8.2. 9.*E.*4.38. *F.N.B.*198.*E.* 14.*H.*8.4. *lib.*9.*fo.*135. *Ascoughes case.*

If two Coperceners be, and one of them let her part to another for yeares and after vpon a writ of partition brought against the Lessor too little is alotted to the Lessor, it is holden by some that the Lesse cannot auoide it for that it is made by the oath of men, and iudgement is thereupon giuen that the partition shall remaine firme and stable. But if there be two Coperceners of three acres of land euery one of equall value, and the one Copercener letteth her part, and after make partition, and one acre is alotted only to the Lessor, the Lesse is not bound hereby, but he may enter and take the profits of another halfe acre, for that of right belong vnto him. Thus much haue I thought good to set downe for it sufficeth not to know what the Law is in these cases, vnlesse he vnderstand the reason and cause thereof.

(a) 7.*H.*4.12. 33.*H.*8.*Dier* 52.

And albeit (as hath beene said) a lease for yeares must haue a certaine beginning, and a certaine end, yet the continuance thereof may be incertaine, for the same may cease and reuiue againe in diuers cases. As if tenant in taile make a lease for yeares reseruing xx. shillings, and after take a wife and die without issue, now as to him in the reuersion the lease is meerely voide, but if hee indow the wife of tenant in taile of the land, (as she may be though the estate taile be determined) now is the lease as to the tenant in dower (who is in of the state of her husband) (a) reuiued againe as against her, for as to her the estate taile continueth, for she shal be attendant for the third part of the rent seruices, and yet they were extinct by act in Law. So it is if tenant in taile make a lease for yeares vt supra, and dieth without issue, his wife enseint with a sonne, he in the reuersion enter, against him the lease is voide, but after the sonne be borne the lease is good, if it be made according to the (b) statute, and otherwise is voydable.

(a) 10.*E.*3.26. 34.*Ass.*15. 23.*E.*3. *Dower* 130.

(b) 32 *H.*8.*ca.*28.

The King made a gift in taile of the Mannor of Eastfarleigh, in Kent to W. to hold by Knights seruice; W. made a lease to A. for thirtie fiue yeares, reseruing thirteens pound rent; W. dyed, his sonne and heire of full age, all this was found by office: as to the King this lease is not of force, for he shall haue his primer seisin as of lands in possession, but after liuerie, the lesse may enter; and if the issue in taile accept the rent, the lease shall bind him, for the Kings primer seisin shall not take away the election of the issue in taile, for it may be that the rent was better than the land: (c) and so it was adiudged in Awstens case, as I had it of the report of Master Edmond Plowden, a graue and learned Apprentice of Law.

(c) *Pasch.*2. & 3. *ph.* & *Mar. in an information of Intrusion in the Exchequer against Awsten. Vid Dier Pasch.*2. & 3. *Ph.* & *Mar.*115. 13.*Eliz. ca.*10.

If tenant in fee take wife, and make a lease for yeares, and dieth, the wife is endowed, she shall auoyd the lease, but after her decease the lease shall bee in force againe. But if the Patron grant the next auoydance, and after Parson, Patron, and Ordinarie, before the Statute, (d) had made a lease of the glebe for yeares, and after the Parson dieth, and the grantee of the next auoydance had presented a Clerke to the Church, who is admitted, instituted, and inducted, and dieth within the terme; the Patron presents a new Clerke, and he is admitted, instituted, and inducted, albeit he commeth in vnder the Patron that was partie to the lease, yet because the last incumbent, who had the whole state in him, auoyded the lease, it shall not reuiue againe, no more than if a feme couert leuie a fine alone, if the husband enter and auoyd the fine, and die, the whole estate is so auoyded as it shall not bind the wife after his death.

(d) 6.*E.*6 *Dier*72. 17.*E.*3.52. 17.*Ass.p.*17. 2.*R.*3.20. 9.*H.*6.33.

2.E.3.8.per Scrope.

If a woman be endowed of an aduowſon which is appropriated, and the preſent, and her incumbent is admitted, inſtituted, and inducted, albeit the incumbent die, yet is the appropriation wholly diſſoined, becauſe the incumbent which came in by preſentation, had the whole ſtate in him, and ſo was it adiudged, as the caſe is to be intended.

Pl.Com.437.a.

Tenant in tatle make a leaſe for fortie yeares, reſeruing a rent, to commence ten yeares after; tenant in tatle die, the iſſue enter and infeoffe A. ten yeares expire, the leſſee enter, if A. accept the rent, the leaſe is good, for he ſhall haue the ſame election that the iſſue in tatle had, either to make it good, or to auoyd it, ſo as it could not be preciſely affirmed, whither by the entrie of the iſſue this executorie leaſe was auoyded, but it dependeth incertainly vpon the will of the feoffee. But now I know you are deſirous to heare Littleton, who is ſpeaking to you.

¶ *Et quant le leſſee enter per force del leaſe, donques il eſt tenant pur terme des ans.* And true it is, that to many purpoſes he is not Tenaunt for yeares vntil he enter: as a releaſe made to him is not good to him to increaſe his eſtate, before entrie; but he may releaſe the rent reſerued before entrie, in reſpect of the priuitie. Neither can the Leſſor grant away the reuerſion by the name of the reuerſion, before entrie, vide Sect. 567. But the leſſee before entrie hath an intereſt, intereſſe termini grantable to another, vide Sect. 319. And albeit the leſſor die before the leſſee enters, yet the leſſee may enter into the lands, as our Author himſelfe hoſdeth in this chapter. And ſo if the leſſee dyeth before he entred, yet his executors or adminiſtrators may enter, becauſe hee preſently by the leaſe hath an intereſt in him: And if it be made to two, and one die before entrie, his intereſt ſhall ſuruiue. Vid Sect. 281.

V.Sect.454.455

V.Sect.665. more fully of this matter.

He that hath a leaſe for yeares, hath it either in his owne right, whereof Littleton hath here ſpoken, or in anothers right, and that in diuers manners, as a man may haue a terme for yeares in the right of his wife, whereof the husband hath power to diſpoſe at any time during his life, and if he ſuruiueth his wife, the law doth giue the leaſe to him. But if he make no diſpoſition thereof, and his wife ſuruiue him, it remaineth with the wife: but of this in another place more fully.

If a man be poſſeſſed of a terme of fortie yeares in the right of his wife, and maketh a Leaſe for twentie yeares, reſeruing a rent, and die, the wife ſhall haue the reſidue of the terme, but the executors of the husband ſhal haue the rent, for it was not incident to the reuerſion, for that the wife was not partie to the leaſe. So note, a diſpoſition of part of the terme is no diſpoſition of the whole. But if the husband grant the whole terme, vpon condition that the grantee ſhall pay a ſumme of money to his executors, &c. the husband die, the condition is broken, the Executors enter, this is a diſpoſition of the terme, and the wife is barred thereof, for the whole intereſt was paſſed away.

Mich.19.El.in the kings Bench.

If a leaſe be made to a baron and feme for terme of their liues, the remainder to the Executors of the ſuruiuor of them, the husband grant away this terme and dieth, this ſhall not barre the wife, for that the wife had but a poſſibilitie, and no intereſt.

37.Aſſ.p.11.Pl.Com.418.b

If the husband and wife be eiected of a terme in the right of his wife, and the husband bring an eiectione firmæ in his owne name, and haue iudgement to recouer, this is an alteration of the terme, and veſteth it in the husband.

If a leaſe for yeares be made to a Biſhop and his ſucceſſors, yet his executors or adminiſtrators ſhall haue it in auter droit, for regularly no Chattell can goe in ſucceſſion in a caſe of a ſole Corporation no more than if a leaſe be made to a man and his heires, it can goe to his heyres. But let vs returne to Littleton.

Touching the time of the beginning of a leaſe for yeares, it is to be obſerued, that if a leaſe be made by Indenture, bearing date 26. Maii, &c to haue and to hold for twentie one yeares, from the date, or from the day of the date, it ſhall begin on the twentie ſeuenth day of May. If the leaſe beare date the twentie firſt day of May, &c. to haue and to hold from the making hereof, or from henceforth, it ſhall begin on the day in which it is deliuered, for the words of the Indenture are not of any effect till the deliuerie, and thereby from the making, or from henceforth take their firſt effect. But if it be à die confectionis, then it ſhall begin on the next day after the deliuerie. If the habendum be for the terme of twentie one yeares, without mentioning when it ſhall begin, it ſhall begin from the deliuerie, for there the words take effect, as is aforeſaid. If an Indenture of leaſe beare date, which is voyd or impoſſible, as the thirtieth day of February, or the fortieth of March, if in this caſe the terme be limitted to begin from the date, it ſhall begin from the deliuerie, as if there had beene no date at all. (a) And ſo it is, if a man by his Indenture of leaſe, either recite a leaſe which is not, or is voyd, or miſrecite a leaſe in point materiall which is in eſſe, To haue and to hold from the ending of the former leaſe, this leaſe ſhall begin in courſe of time from the deliuerie thereof.

Li.5.fo.1.Clayton's caſe 12. Eliz. Dyer 286.

14.El.Dy.307.5.El.Dy.218

Li.2 fo.5.Golding's caſe.

(a) Pl.Com.148.3.E.6.tit. Leaſes Br.62.3.El.Dy.195. 1.Mar.Dyer 116.

¶ *Et ſi le leſſor en tiel caſe reſerue a luy vn annual rent ſur tiel caſe, il poet eſtier a diſtreyner pur le rent, on il poet auer action de debt pur les arerages.*

¶ *Reſerue*

¶ *Reserue a luy vn annual rent, &c.* **First it appeareth** (b) **here by** Littleton **that a rent must be reserued out of Lands or Tenements, whereunto the Lessor may haue resort or recourse to distreine, as** Littleton **here also saith, and therefore a rent cannot be reserued by a common person out of any incorporeall inheritance, as Aduowsons, Commons, Offices, Corrodie, mulcture of a Mill, Tythes, Faires, Markets, Liberties, Priuiledges, Franchises and the like.** (c) **But if the lease be made of them by Deede for yeares, it may be good by way of Contract to haue an action of debt, but distreine the Lessor cannot. Neither shall it passe with the graunt of the reuersion for that it is no rent incident to the reuersion. But if any rent be reserued in such case vpon a lease for life, it is vtterly voide, for that in that case no action of debt doe lye. But if a man demiseth the vesture or herbage of his land he may reserue a rent, for that the thing is mayneyable, and the Lessor may distreine the chattel vpon the Land: And so a reuersion, or a remainder of lands or tenements may be granted reseruing a rent, for the apparant possibility that it may come in possession, and they are tenements within the words of** Littleton.

(a) It appeareth by Littleton **that** reservando **is an apt word of reseruing a rent, and so is** reddendo, solvendo, faciendo, inveniendo, dummodo, **and the like.**

(b) **And note a diuersitie betweene an exception (which is euer of part of the thing granted and of a thing in esse) for which** exceptis, saluo, præter, **and the like be apt words; and a reseruation which is alwayes of a thing not in esse, but newly created or reserued out of the land or tenement demised.** (c) Potest enim quis rem dare & partem rei retinere, vel partem de pertinentijs, & illa pars quam retinet semper cum eo est & semper fuit. (d) **But out of a generall a part may be excepted, as out of a Mannor; an Acre,** Ex verbo generali aliquid excipitur, **and not a part of a certaintie, as out of twentie Acres, one.**

It is further to bee obserued that the Lessor cannot reserue to any other but to himselfe, for Litt. sayth reserue a luy, **reserue to himselfe.** (e) **If two toyntenants be, & they make a lease for yeares by paroll, or deed poll reseruing a rent to one of them, this shall enure to them both, but if it bee so reserued by deed indented, it shall enure to him alone by way of conclusion.**

(f) Littleton **here is putting of a case, and not making a lease, for then he would not reserue the rent to him, but to him, and his heires, for otherwise the rent shall determine by his death if he die within the terme.** (g) **But if he reserue a rent generally without shewing to whom it shall goe, it shall goe to his heires. If he reserue a rent to him and his Assignes, yet the rent shall determine by his death, because the reseruation is good but during his life. So it is if he reserue a rent to him and his Executors it shall end by his death, because the heire hath the reuersion, and the rent was incident to the reuersion. So if a man warrant land to** B. **and his assignes, the assignee must vouche during the life of** B. **for the warrantie continus but only during the life of** B. **for the warrantie is but for life, for want of words of inheritance. But if the warrantie be to** B. **his heires and assignes, so as he hath an inheritance therein, then his assignee shall vouche after his decease. So if the rent be reserued to the Lessor his heires and assignes, so as it be incident to the inheritance, then shall all the assignees of the reuersion enioy the same.**

¶ *Annual rent.* **So it is if the rent be reserued euery two or three** or more yeares. **Of Rents** Littleton **doth excellently treate hereafter in his Chapter of rents, and therefore in this place thus much shall suffice.**

¶ *A distreiner pur le rent.* **Here it is necessarie to be seene of what** things a distresse may be taken for a rent, and how the distresse ought to be demeaned. (h) **First it must be of a thing, whereof a valuable propertie is in some body, and therfore Dogs, Bucks,** Does, Conies **and the like that are** fere naturæ **cannot be distreyned. Secondly, although it be of valuable propertie as a horse, &c. yet when a man or woman is riding on him, or an axe in a mans hand cutting of wood and the like, they are for that time priuiledged and cannot be distreyned.** (i) 3. **Valuable things shall not be distreined for rent for benefit and maintenance of trades, which by consequent are for the Common-wealth, and are there by Authority of Law, as a horse in a Smithes shop shall not be distreyned for the rent issuing out of the shop, nor the horse, &c. in the Hostry, nor the materials in the Weauers shop for making of cloth, nor cloth or garments in a Taylors shop, nor sacks of corne or meale, in a Mill nor in a Market; nor any thing distrayned for damage feasant, for it is in custody of Law, and the like.**

(k) 4. **Nothing shall be distreyned for rent, that cannot be rendered againe in as good plight as it was at the time of the distresse taken, as sheaues or shocks of corne or the like cannot be distreyned for rent, but for damage feasant they may be distreyned. But charrets or carts with corne may be distreyned for rent for they may be safely restored.**

(l) 5 **Beasts belonging to the plow,** aueria carucæ **shall not be distreined (which is the ancient Common Law of England for no man shall be distreyned by the vtensills or instruments of his trade or profession, as the axe of the Carpenter, or the bookes of a scholler) whilst goods**

(b) *Li.*7.*fo.*23. *Butt case.* Li. 10.*fo.*39.60.
(c) 30.*Ass.p.*5. 12.*Ass.*20. 20.*E.*4.10. 1.*H.*4.1,2,3.11.*H.*4.82. 19.*E.*2.*Fines* 126.44.*E.*3.45 9.*Ass.*24.26.*ass.*60.14.*E.*3. *Scire fac.*122.5.*E.*3.68. 17.*E.*3.75.11.*H.*4.42. 3.*H.*6.21.45.10.*H.*6.12. 21.*H.*6.11.5.*H.*7.39. 21.*H.*7.19.17.*E.*2.*Ex.*112. 23.*El. Dyer* 377.

(a) 40.*E.*3.47.8.*E.*3.67. 21.*E.*4.62.3.*H.*6.45. 31.*Ass p.*30.3.*ass.*9.26 *ass.*66. 32.*E.*3.*Ent.*291.8.*E.*4.8. 10.*El. Dy.*276.*Tl. Com. in Browning & Beesons case fo.*131.132.*&c.*
(b) 50.*E.*3.12.13.*Ass.*9. 38.*E.*3.10.21.*E.*3.4.34.*ass.*11 29.*E.*3.14. 3.*H.*6.45. 10.*H.*6.8.41.33.*H.*6.1. 35.*H.*6.34.17.*ass.*14 *H.*8.1. 44.*E.*3.43.*Pl. Com.*361.
(c) *Bract li.*2.*f.*32.*b.* & *f.*249
(d) 9.*El. Dy.*264.38 *H.*6 38 14.*H.*8.1.22.*E.*3.8. 2.*E.*3.56. 5.*E.*3 66. 34.*Ass.*11.
(e) 5.*E.*4.4. 14 *E.*3. *bre.*282 *lib.*8.*fo.*70.71.
(f) *Vid. Sect.*314.215.216. *&c.* 10.*E.*4.18. 11.*E.*3. *Ass* 86. 27.*H.*8.19. 21.*H.*7.25.30.*H.*8.*Dy.*45.
(g) *Mich.*5.*Ia. in repl inter Wootton & Edwin bank le roy. Hil.*33.*El. Rot.*1431. *in ba. le roy enter Richmond & Butcher.*

*Vi. for this word Distreine, Sect.*136.
(h) 14.*H.*8.25.2.*E.*2.*tit. Distresse* 6.*R.*2. *Resceus* 11. 7.*E.*3. *Answer.*199.15.*E.*2. *Answere*2.
(i) 22.*E.*4.49.*b.*7.*H.*7.1.*b.* 22.*E.*4.36.4 *E.*6.*tit. Dist. Br.*74.

(k) 18.*E.*3.4.*a.*11.*H.*7. 14.*a.*21.*H.*7.39.*b.*22.*E* 4. 50.*b.*2.*H.*4.15.
(l) *Okehams* 38.39. *Bra. li.*4.*f.*217.*F.N.B.*90.*a Reg.*97. *Flet. li.*2.*ca.*41. *Mirr. cap.*2.§.15.16. 4.*E.*3.1.24.*E.*3.17.

or other beasts which Bracton calls animalia (or catalla) otiosa may be distrained (m). 6. Funnelles, Caudrons or the like fixed to the freehold, or the doores or windowes of a house, or the like cannot be distrained. (n) Lastly, beasts that escape may be distrained for rent, though they haue not beene lenant and couchant. (o) Note that he that distraines any thing that hath life must impound them, in a lawfull pound within three miles in the same Countie, and that is either Ouert or Open, in a Pinfold made for such purposes, or in his owne Close, or in the Close of another by his consent. And it is therefore called Open, because the Owner may giue his Cattle meate and drinke without trespasse to any other, and then the Cattle must be sustained at the perill of the Owner. (p) Or it is a Pound Couert or Close as to impound the Cattle in some part of his house, and then the Cattle are to bee sustained with meate and drinke at the perill of him that distraineth, and he shall not haue any satisfaction therefore. But if the distresse be of Vtensils of houshold or such like dead goods which may take harme by wet or weather, or be stolne away, there he must impound them in a house or other Pownd couert within three miles within the same Countie, for if he impound them in a Pownd ouert hee must answer for them.

(m) 21.H.7.26. 3.E.3 Ass.46.9.
(n) 7.H.7.1.b.10.H.7.21. 11.H.7.4.a. 15.H.7.17. 18.E.2.auowrie 219. 6.E.4. 22.E.4.49.
4.E.3. distres.18. 27.E.3.80. 2.H.4.16.
(o) Ma lobr. cap. 4. W.1.cap. 16. 2 & 3.Ph. & mar.cap.13. Fleta lib.2.cap.20. 6.H.3 auowrie 242. 30. Ass.38. 1.H.6.9. 22.E.4.11.F.N.B. 89. Doctor & Student. lib.2.cap. 27. 5.H.7. fol.9.
(p) 33.H.8.tit.distres. Br.65

(q) If the distresse be taken of goods without cause the Owner may make Rescous, but if they distrained without cause, and impounded, the Owner cannot breake the Pownd and take them out, because they are then in the custodie of the Law.

(q) 4.E.6.tit.distres.74. F.N.B.100.E.

(r) But if a man distraine Cattle for damage feasant, and put them in the pownd, and the Owner that had common there make fresh suite, and find the doore vnlocked, he may iustifie the taking away of the Cattle in a parco fracto. (s) If the Owner breake the Pownd, and take away his goods, the partie distrainting may haue his Action de parco fracto, and hee may also take his goods that were distrained whereseuer he find them, and impownd them againe.

(r) 3.E.3.tit.trauers.11.

(s) 34.H.6.18.

It is called a Writ de parco fracto of these words in the Writ (t) Parcum illum vi & armis fregit. And the forme thereof appeare in the Register and F.N.B.

(t) Regist. F.N.B.100.101.

But it is to be obserued that for the rent due the last day of the Yearme, the Lessor cannot distraine because the Terme is ended, and therefore some vse to reserue the last halfe yeares rent, at the Feast of the Natiuitie of Saint Iohn Baptist before the end of the Terme, so as if the rent be not then paid, he may distraine betweene that and Michaelmasse following.

¶ *Action de debt. Note* a diuersitie betweene a rent reserued vpon a lease for yeares, reseruing a yearely rent; the Lessor may haue seuerall Actions of debt for euery yeares rent. But vpon a bond or contract for payment of seuerall summes, no Action of debt lieth till the last day be past. But otherwise it is of a Recognizance, which see at large and the reason thereof cap. Releases Sect 512.513. (u) Note that the Lord shall not haue an action of Debt for releife or for escuage due vnto him, because hee hath other remedie, but his Executors or Administrators shall haue an Action therefore, because it is now become as a flower faine from the stocke, and they haue no other remedie. Neither shall the Lord haue an Action of debt for aide, pur file marier or faire fitz Chiualer for the cause aforesaid.

(u) 7.H.6.13.lib.4.fol.49. Lib.3.fol.16. 34.E.1.tit. auowrie 233. 32.H.8.Br. relefe 11.F.N.B.82.83. Glanuil.lib.9.cap.35. Fleta lib.2.cap.40. & lib.3. cap.14. Bracton.lib.2.fol.36. W.1.cap.35. 25.E.3 cap.11. Britton.fol.57.& 70.

¶ *Mes en tiel case il couient que le lessor soit seisie de mesmes les tenements al temps del lease, car est bone plea pur le lessee a dire que le lessor nauoit riens en les tenements al temps del lease.* And the reason of this is, for that in euery contract there must be quid pro quo, for contractus est quasi actus contra actum, and therefore if the Lessor hath nothing in the land, the Lessee hath not quid pro quo nor any thing for which he should pay any rent. And in that case he may also plead, that the Lessor non dimisit, and giue in euidence the other matter.

¶ *Si* (x) *non que le lease soit per fait indent, &c.* If the lease be made by deed indented then are both parties concluded; (y) but if it be by deed poll the Lessee is not estopped to say that the lessor had nothing at the time of the Lease made. A. lessee for the life of B. makes a lease for yeares by deed indented, and after purchase the reuersion in fee. B dieth, A. shall auoid his owne Lease, for he may confesse & auoid the lease which took effect in point of interest, and determined by the death of B. But if A. had nothing in the land, and made a Lease for yeares by deed indented, and after purchase the land, the Lessor is as well concluded, as the Lessee to say that the Lessor had nothing in the land, and here it worketh only vpon the conclusion, and the Lessor cannot confesse and auoid as hee might in the other case. (z) If a man take a Lease of his owne Land by deed indented reseruing a Rent the Lessee is concluded. (a) But if a man take a Lease of the herbage of his owne Land by Deed indented, this is no conclusion, to say that the Lessor had nothing in the Land, because it was not made of the land it selfe: (b) but if a man take a Lease for yeares of his owne Land by deed indented, the estopell doth not continue after the terme ended. For by the making of the lease the estopell doth growe and consequently by the end of the lease, the estopell determines (c) and that part

(x) 45.E.3.9.20.E.4.10. 34.H.6.48. 35.H.6.34. 9.H.6.35. 11.H.4.22.
(y) 2.E.2.Estop.253. 39.E.3.13. Pl.Com.434. 18.E.3.16. 15.E.3.Estop.236. 14.H.4.32.
(z) 14.H.6.23. 8.H.4.7.

(a) Resolue. Pasch. 2 Eliz. in Communi Banco.
(b) Mich.31.& 32.Eliz. in Communi Banco adiudge in Londons case.
(c) 38.H.6.24. 30.E.3.21.

part of the indenture which belonged to the lesse, doth after the terme ended, belong to the lessor, which should not be if the estoppell continued.

Section 59.

CEt est ascauoire, Que en lease pur terme de ans per fait ou sans fait, il ne besoigne ascun liuerie de Seisin deste fait al Lessee, mes il poet enter quant il voet p force de melme de Lease. Mes des Feoffments faits en pais, ou dones en l'Taile, ou lease pur term de vie, en tiels cases ou Franktenement passera, si ceo soit per fait ou sauns fait, il couiēt auer vn liuery de seisin.

And it is to be vnderstood, That in a lease for yeares by deed or without deed, there needs no Liuery of seisin to be made to the Lessee, but he may enter when he will by force of the same lease. But of Feoffements made in the Countrie, or gifts in Taile, or Lease for terme of life, in such cases where a Freehold shall passe, if it be by Deed, or without Deed, it behooueth to haue Liuerie of Seisin.

¶ *Liuerie de seisin.* Traditio, or deliberatio seisinæ is a solemnitie that the Law requireth, for the passing of a Freehold of Lands or Tenements by deliuerie of Seisin thereof. (b) Interuenire debet solennitas in mutatione liberi tenementi ne contingat donationem deficere pro defectu probationis.

18.E.3.fo.16.41.F.3.17. 40.Ass.10.2.Ass.1.2 E.3.4 43.E.3.Fesc.51.Pl.Com. 25.a. & 305.b.V.Sect.66.

(b) Bract.li.2.ca.15.

And there be two kinds of liuerie of seisin, viz. a liuerie in (c) Deed, and a liuerie in Law. A liuerie in Deed, is when the Feoffor taketh the ring of the doore, or turfe or twigge of the land, and deliuereth the same vpon the land to the Feoffee in name of seisin of the land, &c. per hostium & per haspam & anulum vel per fustem vel baculum, &c.

(c) Bract.li.2.ca.15.& 18. Brit.ca.33.in fine fo.87. Flet.li.3.ca.15.

A seised of an house in fee, and being in the house, (d) saith to B. I deuise to you this house for terme of my life; this is a good beginning to limit the state, but here wanteth liuerie. A liuerie in Deed may be done two manner of wayes by a solemne act and words, as by deliuerie of the ring or halse of the doore, or by a branch or twig of a tree, or by a turfe of the land, and with (e) these or the like words, the feoffor and feoffee both holding the Deede of feoffement, and the ring of the doore, halse, branch, twigge, or turfe: and the feoffor saying, Here I deliuer you seisin and possession of this house, in the name of all the Lands and Tenements contained in this Deed, according to the forme and effect of this Deed. Or by words without any Ceremonie or Act, as the feoffor being at the house doore, or within the house, Here I deliuer you seisin and possession of this house, in the name of seisin and possession of all the lands and tenements contained in this Deed, Et sic de similibus, or enter you into this house or land, and haue and enioy it according to the Deed; or, Enter into the house or land, and God giue you ioy, or I am content you shall enioy this land according to the Deed, or the like. For if words may amount to a liuerie within the view, much more it shall vpon the land. But if a man deliuer the Deed of feoffement vpon the land, this amounts to no liuerie of the land, for it hath another operation to take effect as a Deed: but if he deliuer the Deed vpon the land in name of seisin of all the lands contained in the Deed, this is a good liuerie: and so are other bookes entended that treat hereof, that the Deed was deliuered in name of seisin of that land. Hereby it appeareth, That the deliuerie of any thing vpon the land in name of seisin of that land, though it be nothing concerning the land, as a ring of gold, is good, and so hath it beene resolued by all the Iudges, and so of the like.

(d) Li.6.fo.26.Sharps case.

(e) See of this more, Sect.60.

41.E.3.17.b.41.Ass.p 10. 38.Ass.p.2.38.E.3.11. 39.Ass.p.12.26.Ass.39. 27.Ass.p.61.18.E.3.16. Li.6 fo.26. Sharps case.

43.E.3.tit.Feoffm.51. 35.H.8.Feoffm.Br.

50.E.3.Rot.Parl.nu.30.

If diuers parcells of land be conteyned in a Deed, and the Feoffor deliuers seisin of one parcell according to the Deed, all the parcels doe passe albeit he saith not (in name of all, &c.) because the Deed conteyneth all. And so if there be diuers Feoffees, and hee make liuery to one according to the Deed, the land passeth to all the Feoffees, and yet the playner way is to say (in the name of the whole, or of all the Feoffees.)

13.E.3.Estop.177.

If a man make a Charter in fee, and deliuer seisin for life secundum formam cartæ, the whole fee simple shall passe, for it shall be taken most strongly against the Feoffor. Note that these words (Secundum formam cartæ) are vnderstood according to the quantitie and qualitie of the effectuall estate conteyned in the Deed. If a man make a lease for yeares by Deed, and deliuer

Ibidem.

7.E.4.25.29.Ass.40. 10.Ass.19.43.Ass.20.

liuer seisin according to the forme and effect of the Deede, yet he hath but an estate for yeares, and the liuery is voide as Littleton saith. So if A. by Deed giue land to B. to haue and to hold after the death of A. to B. and his heires, this is a voide Deed. because he cannot reserue to himselfe a particular estate, and construction must be made vpon the whole Deed, and if liuery be made according to the forme and effect of the Deed, the liuery also is voide because the liuery referreth to a Deed that hath no effect in Law, and therefore it cannot worke secundum formam & effectum cartæ. And so it was adiudged, & sic de similibus. * And it is to be obserued that neither the Feoffor being absent, can make liuery, nor the Feoffee being absent can take liuery; but by warrant of Attorney, by Deed and not by parol, because it concerneth matter of freehold.

Mich. 33. & 34. El. C. in the Kings bench Inter Hegge & Crosse for lands in London. Vid. Pl. com. 395.

** See more of this Sect. 66. 11. H. 4. 71. 19. Ass. 7. 19. H. 8. 9. b.*

Vide Sect. 1. in Bridgewaters Case, where a man hath a moueable estate of inheritance, for example there put, in 13. acres: the question is where liuery shall be made. First, if they be parcell of a Mannor, they may passe by the name of the Mannor, but if they be in grosse then the Charter of Feoffment must be of 13. acres, lying and being in the meadow of 80. acres, generally without bounding or discribing of the same in certaintie, and liuery of the seisin of any 13. acres allotted to the feoffee for a yeare secundum formam cartæ is a good liuery to passe the content of 13. acres whersoeuer the same lie in that meadow. In the second case where one entire Mannor is seperate and deuided, as is aforesaid, there is no question but the liuery must be made of that Mannor, but in the other case where two Mannors are separate, and deuided alternis vicibus, there the Charter of feoffment must be made of both, and liuery in that Mannor which he is seised of in any one yeare secundum formam cartæ, and the next yeare in the other secundum formam cartæ: for there are two distinct Mannors, and seuerall estates in them.

Bridgewaters Case.

Vid. Sect. 1.

A liuery in Law is when the Feoffor saith to the Feoffee being in the view of the house or land, (I giue you yonder land to you and your heires and goe enter into the same, and take possession thereof accordingly,) and the Feoffee doth accordingly in the life of the Feoffor enter this is a good feoffment for signatio pro traditione habetur. And herewith agreeth Bracton, Item dici poterit, & assignari quando res vendita vel donata sit in conspectu quam venditor & donator dicit se tradere: And in another place he saith, in seisina per affectum & per aspectum. But if either Feoffor or the Feoffee die before entry the liuery is voyde. And liuery within the view is good where there is no Deed of feoffment. (a) And such a liuery is good albeit the land lie in another country. (b) A man may haue an inheritance in an vpper chamber, though the lower buildings and soyle be in another, and seeing it is an inheritance corporeall it shall passe by liuery. (c) A man maketh a Charter of feoffment and deliuers seisin within the view, the Feoffee dares not enter for feare of death, but claimes the same, this shall vest the freehold and inheritance in him; albeit by the liuery no estate passed to him, neither in Deed, nor in Law, so as such a claime shall serue, aswell to vest a new estate and right in the Feoffee, as in the cõmon case to reuest an ancient estate and right in the disseisee, &c. as shalbe said hereafter more at large in the chapter of continuall claime. And so note a liuery in Law shalbe perfected and executed by an entry in Law. (d) If a man be disseised, and make a Deed of feoffment, and a letter of Attorney to enter and take possession, and after to make liuery secundum formam cartæ, this is a good feoffment albeit he was out of possession at the time of the Charter made for the Authority giuen by the letter of Attorney is executorie, and nothing passed by the deliuery of the Deed till liuery of seisin was made. And in ancient letters of Attorney power is giuen to others to take possession for the Feoffor. But if a man be disseised, and make writing of Lease for yeares and deliuer the Deed, and after deliuer it vpon the ground, the second deliuery is voide, for the first deliuery made it a Deed, and for that the lease for yeares must take effect by the deliuery of the Deed, therefore the Deed deliuered when he was out of possession was voide. But so it is not of a Charter of feoffment, for that takes effect by the liuery and seisin. But if the Lessor had deliuered it as an escrowe, to be deliuered as his Deed vpon the ground, this had beene good.

38. E. 3. 11. 38. Ass. p. 2. 43. Ass. p. 20. Temps H. 8. Tit. Feoffments Br. 70. 18. E. 3. 166. 28. H. 8. F. 18. 9. F. 4. 39. per Moyle. Bract. lib 2. cap. 18. & lib. 4. fo. 225. a.

(a) 9. E. 4. 39. 38. E. 3. 11. (b) 9. E. 4. 28. 40. 5. H. 7. 9. 3. H. 6. tit. Plesnt. 1. 11. H. 4. 32. 11. E. 3. Ass. 86. (c) 38. Ass. p. 25.

(d) Hill: 37. Eliz. rot. 620. in com. banco, inter Browne & Turrey adiudged. Dier 16. Eliz. 334. 3. Eliz. Dier 131.

A man makes a lease for yeares and after makes a Deed of feoffment and deliuers seisin, the Lessee being in possession and not assenting to the feoffment, this liuery is voyde, for albeit the Feoffor hath the freehold and inheritance in him, yet that is not sufficient, for a liuery must be giuen of the possession also: but if the lessee be absent, and hath neither wife nor seruants (though he hath cattell) vpon the ground the liuery of seisin shall be good.

Lib. 3. fol. 35. inter Ienuings & Bragge.

If a man be seised of an house, & of diuers seuerall closes in one Countie in fee, and makes a lease thereof for yeares, and afterward maketh a feoffement in fee of the same, and makes liuerie of seisin in the Closes, (the Lessee or his wife or seruants then being in the house) the liuery is voyd for the whole: for the lessee cannot be vpon euery parcell of the land to him demised, for the preseruation and continuance of his possession therein. And therefore his being in the house, or vpon any part of the land to him demised, is sufficient to preserue and continue his possession in the whole, from being ousted or dispossessed.

Leo. 2. fo. 31. 32. Betts ouer his case.

Note

Note a great diuersitie, where a man hath two wayes to passe lands, and both of the wayes be by the Common Law, and he entendeth to passe them by one of the wayes, yet vt res magis valeat it shall passe by the other. But where a man may passe lands either by the Common Law, or by raising of an vse, and seising it by the statute, there in many cases it is otherwise. For example, If a man be seised of two acres in fee, and letteth one of them for yeares, and intending to passe them both by feoffement, maketh a Charter of feoffement, and maketh liuerie in the acre in possession, in name of both, onely the acre in possession passeth by the liuerie. Yet if the lesse attorne, the reuersion of that acre shall passe by the deed and attornement, for he is in by the Common Law, and in the per in both, and so in the like. But otherwise it is, if the father make a Charter of feoffement to his sonne, and a letter of Attorney to make liuerie, and no liuerie is made, yet no vse shall rise to the son, because he should be in by the statute in another degree, viz in the post, and the intention of the parties worke much both in the raising and direction of vses. So if Cesty que vse and his feoffees had joyned in a feoffement after the statute of 1. R. 3. &c. it had beene the feoffement of the feoffees, and the confirmation of Cesty que vse, for the state at the Common Law shall be preferred. So to conclude in this point, Of Freehold and Inheritances, some be corporeall, as houses, &c. lands, &c. these are to passe by liuerie of seisin, by Deed or without Deed, some be incorporeall, as Aduowsons, Rents, Commons, Estouers, &c. these cannot passe without Deed, but without any liuerie. And the law hath prouided the Deed in place or stead of a liuerie. And so it is if a man make a lease, and by Deed grant the reuersion in fee, here the freehold with attornement of the lesse by the Deede doth passe, which is in lieu of the liuerie. See Bract. lib. 2. cap. 18. Et est traditio de re corporali de persona in personam de manu, &c. gratuita translatio, & nihil aliud est traditio in vno sensu, nisi in possessionem inductio, de re corporali; & ideo dicitur, Quod res incorporales non patiuntur traditionem sicut ipsum ius quod rei siue corpori inhæret, & quia non possunt, res incorporales possideri sed quasi, ideo traditionem non patiuntur, &c.

7.E.4.20.a. per tous les Iust. 11.H.4.71. Pl.Com.152. 10.E.4.3.

This antient manner of conueyance by feoffement and liuery of seisin, doth for many respects exceed all other conueyances. For (as hath beene said) if the feoffor be out of possession, neither fine, recouerie, Indenture of bargaine and sale inrolled, nor other conueyance, doth auoyd an estate by wrong, and reduce clearely the estate of the feoffee, and make a perfect Tenant of the Freehold, but onely liuerie of seisin vpon the land: the other conueyances being made off from the ground, doe sometimes more hurt than good, when the feoffor is out of possession. And yet in some cases a freehold shall passe by the Common Law without liuerie of seisin: As if a house or land belong to an office, by the grant of the office by Deed, the house or land passeth as belonging thereunto. So if a house or chamber belong to a Corodie, by the grant of a Corodie, the house or chamber passeth. A Freehold may by custome be surrendred without liuerie, as hereafter shall be said: and so of assignement of Dower ad ostium Ecclesiæ, or otherwise, and by exchange a Freehold may passe without liuerie, as hereafter shall be said in this Chapter.

Lib.2.fo.55.Buckler's case.

1.H.7.28. 8.H.7.4.

31.H.6.16.8.H.7.4. M.31.E.1 coram Rege. Rame ph Hunting's case. 3.E.3.Coron.310.11.H.4.83 V.Sect.74.

Section 60.

¶ MEs si home lessa terres ou Tenements per fait, ou sans fait, a terme des ans, le remainder ouster a vn auter pur terme de vie, ou en taile, ou en fee donque en tiel case il couient que le lessor fait vn liuerie de seisin a le lessee per terme de ans, ou autrement riens passa a eux en le remaind̄ coīt q̄ le lessee ent̄ en

BVt if a man letteth lands or tenements by Deed or without Deed for terme of yeares, the remainder ouer to another for life, or in taile, or in fee, in this case it behooueth, that the lessor maketh liuery of seisin to the lessee for yeres, otherwise nothing passeth to them in the remainder, although that the lessee enter into the

¶ *Per fait, ou sauns fait.* For seeing that the remainders take effect by liuerie, there needs no deed.

22.H.6.1.10.E.4.1. 18.E.4.13.

¶ *Le remainder* is a residue of an estate in land depending vpon a particular estate, and created together with the same, and in Law-Latin it is called Remanere.

¶ *Fait vn liuery de seisin al Lessee.* This Liuery is not necessarie in this case for the lessee himselfe, because he hath but a Terme for yeares, but it is for the benefit of them in the rem', so as the liuery the lesse shal enure for the benefit of them in the rem': for the liuerie of the possession could not be made to the next in remainder, because the

the poſſeſſion belonged to the leſſee for yeares, and for that the particular terme, and all the remainder make in Law but one eſtate, and take effect at one time therefore the liuerie is to bee made to the leſſee. But if a leaſe for yeares without deed bee made to A. and B. the remainder to C. in fee, and liuerie is made to A. in the abſence of B. in the name of both; it ſeemeth the liuerie is good to veſt the remainder; and there is a diuerſitie, betweene two ioynt Attornies to receiue liuerie for another, and liuery and ſeiſin is made to one of them, in the name of both, this is clearely void becauſe they had but a mere and bare authoritie, and they both doe, in Law make but one Attorney, vnleſſe the warrant be ioyntly and ſeuerally, but the leſſee for yeares hath an intereſt in the land. Againe, if A. is to make a feoffment to B. and C. and their heires without deed, and A. makes liuerie to B. in the abſence of C. in the name of both, and to their heires; this liuerie is void to C. becauſe a man being abſent cannot take a freehold by a liuery, but by his Attorney being lawfully authoriſed to receiue liuerie by deed, vnleſſe the feoffment be made by deed, and then the liuerie to one in the name of both is good.

leſs tenements. Et ſi le termor en tiel cas entra deuant aſcun liuerie de ſeiſin fait a luy, donque eſt le franktenement & auxy le reuerſion en le leſſor: Mes ſi il fait liuerie de ſeiſin a le leſſee, donque eſt le franktenement oue le fee a eux en le remainder, ſolonque le forme del grant & le volunt del leſſor.

tenements. And if the Termour in this caſe entreth before any liuery of ſeiſin made to him, then is the Freehold and alſo the reuerſion in the Leſſor. But if he maketh liuerie of ſeiſin to the Leſſee, then is the Freehold together with the fee to them in the remainder acording to the forme of the grant, & the wil of the leſſor.

10.E.4.1.12.E.4.16. 15.E.4.18.22.E.435. 40.E.3.10.41. *Temps H.8. Feffment* 172. 6.H.4.2.b. *Litt.* 153. 3.H.7.13.

Note there is a diuerſitie betweene liuerie of ſeiſin of land, and the deliuerie of a Deed, for if a man deliuer a Deed without ſaying of any thing, it is a good deliuerie; but to a liuery of ſeiſin of land, words are neceſſarie; as taking in his hand the Deed, and the Ring of the dore (if it be of an houſe) or a turfe or twigge (if it be of land) and the feoffee laying his hand on it, the feoffor ſay to the feoffee, Here I deliuer to you ſeiſin of this houſe, or of this land, in the name of all the land, contained in this Deed, according to the forme and effect of the Deed, (as hath beene ſaid) and if it be without Deed, then the words may be, Here I deliuer you ſeiſin of this houſe or land, &c. to haue and to hold to you for life, or to you and the heires of your bodie, or to you and your heires for euer as the caſe ſhall require.

Ruth cap.4. verſe 7.8. Deut.25.9.10.

When the Kinſman of Elimelech gaue vnto Boas the parcell of land that was Elimelechs, he tooke off his ſhoe, and gaue it vnto Boas in the name of ſeiſin of the land (after the manner in Iſrael) in the preſence, and with the teſtimonie of many witneſſes. And when Ephron infeoffed Abraham of the field of Machepela, hee ſaid to him, Agrum trado tibi, &c. I deliuer thy field to thee.

Geneſis 23. verſe 11.

If man makes a leaſe for yeares to A. the remainder to B. in fee, and makes liuery to A. within the view; this liuerie is void, for no man can take by force of a liuerie within the view, but he that taketh the freehold himſelfe.

¶ *Et ſi le termor en tiel caſe enter deuant aſcun liuery fait, &c.* By the entrie of the leſſee he is in actuall poſſeſſion, and then the liuery cannot be made to him that is in poſſeſſion, for Quod ſemel meum eſt, amplius meum eſſe non poteſt. But if the leſſee and his come vpon the ground, of purpoſe for the leſſor to make, and for the leſſee to take liuery, there his entrie veſt no actuall poſſeſſion in him vntill liuerie be made; for as (a) Affectio tua nomen imponit operi tuo, And therefore if it be agreed betweene the diſſeiſor and diſſeiſee, that the diſſeiſee ſhall releaſe all his right to the diſſeiſor vpon the land, and accordingly the diſſeiſee entreth into the land, and deliuereth the releaſe to the diſſeiſor vpon the land, this is a good releaſe, and the entrie of the diſſeiſee, being for this purpoſe did not auoid the diſſeiſin, for his intent in this caſe did guide his entrie to a ſpeciall purpoſe. And ſo was it reſolued (b) by Sir Iames Dier, and the whole Court of Common Pleas, Paſch. 18. Eliz. vpon euidence which I my ſelfe heard and obſerued. But if the diſſeiſor infeoffe the diſſeiſee and others, there albeit the diſſeiſee came to take liuerie, yet when liuerie is made, the diſſeiſee is remitted, to the whole intendement of law, as ſhall be ſaid more at large in the Chapter of Remitter in his proper place.

(a) *Bracton. lib.1.*

(b) *T.19.Eliz. in Communi Banco. Pl.Com.in Aſſ.de fraſh-ſorer. 91. 29. Aſſ.26. 43. Aſſ.p.3.3.H.6.19. in ſermon.*

Sect.

Section 61.

CEt si home voile faire feoff, per fait ou sans fait, de tres ou tenements que il ad en pluiors villes en vn Countie, le liuerie de seisin fait en vn parcel de les tenements en vn ville en le nosme de touts suffist pur touts les autres terres & tenements comprehendes deins m̃ feoffement, en toutz les autres villes deins m̃ le countie. Mes si home fait vn fait de feoffement des terres ou tenements en diuers Counties, la il couient en chescun Countie auer vn liuerie de seisin.

AND if a man wil make a feoffement by deed or without deed, of lands or Tenements, which hee hath in diuers Townes in one Countie, the liuerie of seisin made in one parcell of the Tenements in one Towne in the name of all the rest is sufficient for all other the Lands and Tenements cõprehended within the same feoffment in all other the Townes in the same Countie, but if a man maketh a Deed of Feoffement of Lands or Tenements in diuers Counties, there it behoueth in euery Countie to haue a liuerie of seisin.

CEN. *vn Countie.* A Countie is fetched frõ the French, and Shire from the Saxon. For Styran in the Saxon tongue signifieth partiri, because euerie Countie or Shire is deuided and parted by certaine metes and bounds from another, and in Latine is called Comitatus à comitando, for accompanying together. And for as much as the men of one Countie doe not accompanie together with men of another Countie at Countie Courts, Turnes, Leets and other Courts, therfore in iudgement, of Law they shall take no notice of a liuerie in another Countie to passe any lands in their owne Countie. But of this more shall be said hereafter. 45.E.3.21.

Section 62.

CEt en ascun cas home auera per le grant dun auter fee simple, fee taile, ou frankten. sans liuerie de seisin. Sicome deux homes sont, & chescun deux est seisie dun quantitie de terre deins vn countie, & lun granta sa terre a lauter en eschange pur la terre que lauter ad, & en Mesme le Manner lauter granta sa ter-

AND in some case a man shall haue by the grant of another a fee simple, fee taile, or freehold without liuery of seisin. As if there bee two men and each of them is seised of one quantitie of Land in one Countie, and the one granteth his Land to the other in exchange for the Land which the other hath, and in like maner the other gran-

CHere Littleton putteth a case where Freehold, &c. shall passe without liuerie of seisin, and therupon putteth the case of an exchange of lands in one Countie that is good by deed or without deed, without any liuerie, but if it bee in seuerall Counties there must bee a deed. Also of things that lie in grant as Aduowsons, Rents, Commons, &c. an exchange of them albeit they bee in one Countie, is not good; vnlesse it be by deed, and therefore Littleton putteth his case warily of land. And in case of a fine, which is a feoffment of Record, of a deuise by a last will, of a surrender, of a release or confirmation to a lesse for yeares, or at will, In all 45.E.3.21. 3.E.4.10. 9.E.4.21.7 H.4 1.8.H.7.4. 28.H.6.2.

Vide Sect.1.

all theſe and ſome other caſes a freehold, &c. (as hath beene ſaid) may paſſe without liuerie. But this word (exchange) which our Authour here vſeth, is ſo appropriated by Law, to this caſe as it cannot bee expreſſed by any Periphraſis or circumlocution.

¶ *En ceo caſe chescun poet enter, &c.* For by the exchange the parties, albeit the lands bee all in one Countie, haue no freehold in Deed or Law in them before they execute the ſame by entrie; and therefore if one of them dieth, before the exchange be executed by entrie, the exchange is void; for the heire cannot enter and take it as a Purchaſor, becauſe he was named only to take by way of limitation of eſtate in courſe of diſcent.

9.E.4.38.39.45.E.3.20.21. 45.E.3. exchange 10.

re a le primer grantor en eschange pur la terre que le primer grantor ad, en ceo cas chescun poit enter en lauter terre issint mise en eschange sans ascun liuerie de seisin, & tiel eschange fait per parolx de tenents deins mesme le Countie sans escript, est Assets bone.

teth his Land to the firſt Grantor in exchange for the Land which the firſt Grantor hath. In this Caſe each may enter into the others land, ſo put in exchange without any liuerie of ſeiſin. And ſuch exchange made by paroll of tenements within the ſame Countie without writing, is good enough.

Section 63.

¶ This is euident enough. But of what things an exchange may be made (which was a conueiance frequent in former times) is to be ſeene, and herein many things are to bee obſerued.

(a) 30.E.1.Eſch.15 3.E.4.10. 9.E.4.21. 14.H.8.20.

First, That the things exchanged (a) need not to be in eſſe at the time of the exchange made. (As if I grant a rent newly created out of my lands in exchange, for the mannor of dale, this is a good exchange.

(b) 6.E.56. 30.E.1.Eſch.16 16.E.3.Eſch.2. 7.H.4.34. 3.E.4.11.

(b) Secondly, There needeth no tranſmutation of poſſeſſion, and therefore a releaſe of a Rent, or Eſtoners, or right to land in eſchange for land is good.

¶ Si les terres ou tenements, soient en diuers counties, cestascauoire ceo que lun ad est vn Countie & ceo que lauter ad est en auter Countie la il couient de auer vnfait indent desire fait enter eux de tiel eschange.

And if the lands or tenements bee in diuers counties, *viz.* that which the one hath in one countie, and that which the other hath in another countie, there it behoueth to haue a deed indented, made betweene them of this exchange.

(c) 9.E.4.21. 9.E.3.56. 21.E.3.6.

The things (c) exchanged need not be of one nature, ſo they concerne lands or Tenements whereof Littleton here ſpeaketh. As land for rent or common, or any other inheritance which concerne lands or tenements, or ſpirituall things, as Tythes, &c. for temporall, and temporall a diuine Seruice for a temporall Seigniorie, &c. But Annuities or ſuch like which charge the perſon only, and doe not concerne lands or tenements, cannot be exchanged for lands or tenements.

Section 64. 65.

Estates. Vide Sect.650.

¶ *En eschange, il couient que les estates soient egales, &c.* Equalitie in lands is threefold, viz. Firſt equalitie in value;

¶ Et nota que en exchange il couient q̄ les estates soient egales, que

And note that in exchanges it behoueth that the eſtates which both par-

am-

ambideux tielx parties aueront en leg fres iſſint eſchanges, car ſi lun voit ꝑ grant que lauter aueroit la terre en fee taile, pur le terre que il aueroit del grant de le auter en fee ſimple, coment que lauť ſoit agree a cel, ceſt eſchange eſt voide, pur ceo q̃ les eſtates ne ſont my egales.

IN the ſame manner it is, where it is granted and agreed betweene them, that the one ſhall haue in the one land fee taile, and the other in the other land but for terme of life, or if the one ſhall haue in the one land fee taile generall, and the other in the other land fee taile eſpeciall, &c. So alwayes it behoueth that in exchãge the eſtates of both parties bee equall, *viz.* if the one hath a fee ſimple in the one land that the other ſhall haue like eſtate in the other land, and if the one hath Fee taile in the one land the other ought to haue the like eſtate in the other land &c. and ſo of other eſtates, but it is nothing to charge of the equal

CEſt mñ le manner eſt, lou il eſt grant ꝑ agree enter eux, que lun auera en lun terre fee taile, ꝑ lauter en lauter terre forſqz a terme de vie, ou ſi lun auera en lun terre fee taile generall ꝑ lauť en lauť terre fee taile eſpeciall, &c. Iſſint touts foits il conient que en eſchange leg eſtates dambideux parties ſoiẽt egaleg ceſtaſcauoire, ſi lun ad fee ſimple en lun terre, que lauter auera tiel eſtate en lauter terre, ꝑ ſi lun ad fee taile en lun terre il conient que lauter aũa ſemblable eſtate en lauter terre, &c. & ſic de alijs ſtatibus, mes neſt my riens a charger del egal value des terres, car ties haue in the lands ſo exchanged, be equall, for if the one willeth and grant that the other ſhall haue his land in fee taile for the land which he hath of the grant of the other in fee ſimple, although that the other agree this, yet this exchange is voide, becauſe the eſtates be not equall.

Secondly, equalitie in quantitie of eſtate giuen and taken. Thirdly, equalitie in qualitie or manner of the eſtate giuen and taken. But as Littleton after ſaith, Equalitie in value of lands in an exchange is not requiſite; Neither equalitie in the qualitie or manner of the eſtate. And therefore if two tenements giue lands to ioynt-ly to two men, and their heires, and the other in exchange of other lands to them and their heires in common, this is a good exchange, and yet the manner of their eſtates is not equall, for the eſtate of one partie is ioynt, and the other in common. And ſo it is if two men giue lands in exchange to A. and his heires for lands from A. to them two and their heires, though the one partie haue a ioynt eſtate, and the other a ſole eſtate, yet the exchange is good. The like is if the one land be of a defeaſible title, and the other of an indefeaſible title, yet the exchange is good till it be auoyded.

(a) An exchange with the King is good and yet the King is ſeiſed in his politique capacitie, and the ſubiect in his naturall capacitie But equalitie of the quantitie of the eſtate is requiſite, as it appeareth clerely in the caſes put by Littleton. (b) But therein it is to be obſerued that it is not neceſſarie that the parties to the exchange be ſeiſed of an equall eſtate at the time of the exchange made: for if Tenant in taile, or a husband, ſeiſed in the right of his wife, exchange lands, and both by the exchange, giue a fee ſimple, this is good vntill it be auoyded by the iſſue in taile, or by the wife after the death of the husband, (d) ſo as Littleton ſaith that in exchanges it behoueth that the eſtates which both parties haue in the land ſo exchanged be equall is as much to ſay as that the ſtate reciprocally giuen in exchange ought to bee equall. (e) But in a partition the eſtates allotted to either partie need not to bee equall

(a) *Bracton lib.5.fo.389. 17.E.3.12.b. 4.H.4.2.*

(b) *14.H.6. 6.E.2.Exch.12. 8.E.2. (ai in vita 28. 10.E.2.Exch. 13. 16.E.3.Exch.2. 3 E.3.19. 12.H.4.12. 21.H.6.25. 13.E.4.3.*

(d) *44.E.3.22.38.E.3.15. 39.E.3.1. 9.E.4.21. 7.H.4.17. 30.E.1.tit. bre.884. 30.E.1. tit. exchange,15.*

(e) *F.N.B.62.m.*

equall, as shall be observed in his proper place.

To shut up this point, There be fiue things necessary to the perfection of an exchange. 1. That the estates giuen be equall. 2. That this word (excambium exchange) be vsed (f) which is so indiuidually requisite, as it cannot be supplied by any other word or described by any circumlocution; and herewith agreeth Littleton afterwards in this chapter Sect. In the booke of Domesday I finde hanc terram cambiauit Hago Briccuino quod modo tenet comes Meriton, & ipium scambium valet duplum.

Hugo de Belcamp pro escambio de warres,

(f) 9.E.4.21. 25.H.6.56. 19.H.6.27. 44.E.3.24. 50. Ass. Dorset. Weston. Hedl. Sandes.

(b) 9.E.4.39. 15.E.4.3. 45.E.3.30.

3. That there be an execution by entrie or claime in the life of the parties, as hath bin said. (g) 4. That if it be of things that lye in grant, it must be by Deede. (h) 5. If the lands be in seuerall Counties there ought to be a Deede indented, or if the thing lye in grant albeit they be in one Countie.

45.E.3. ostiary 1. (g) 28.H.6.2. (h) 45.E.3.20.

(i) If an infant exchange lands and after his full age occupie the lands taken in exchange, the exchange is become perfect, for the exchange at the first was not voyde (because it amounted to a liuery, and also in respect of the recompence) but voidable.

(i) 7.H.4.11. 4.E.2.tit.exch.10 12.H.4.12.

¶ *Coment que lauter agree a cel ceſt eſchange eſt voide.* The agreement of the parties cannot make that good which the Law maketh voide.

coment que la terre lun vault mult pluis que la terre de lauter ceo nest riens a purpose: issint que les estates per leschange fait, soient egales. Et issint ē leschange sont deux grants car chescun partie grant son tre a lauter en eschange, &c. & en chescun de lour grants mention serra fait de leschange.

value of the lands, for albeit that the land of the one be of a farre greater value than the land of the other, this is nothing to the purpose, so as the estates made by the eschange be equall. And so in an eschange there be two grants, for each partie granteth his land to the other in eschange, &c. and in each of their grants mention shalbe made of the eschange.

Section 66.

¶ *Si home lessa terre a vn auter pur terme dans, Coment que le lessor moruſt deuant, &c.* The reason is because the interest of the tearme (as hath beene said) doth passe and vest in the Lessee before entrie, and therefore the death of the Lessor cannot deuest that which was vested before

¶ *Attorney.* Is an ancient English word and signifieth one that is set in the turne, stead or place of another, and of these some be priuate (whereof our Author here speaketh) & some be publike, as Attorneys at Law; whose warrant from his master is ponit loco suo talem Attornatum suum. which setteth in his turne or place such a man to be his Attorney.

¶ Item si home lessa terre a vn auter pur term dans, coment que le lessor moruſt deuant que le lessee enter en les tenements, vncore il poit enter en mesmes les tenements apres le mort le lessour, pur ceo que le lessee per force de le lease ad droit maintenāt dauer les tenements solonc̄ le forme de le lease. Mes si home fait vn fait de feoffement a vn auter, & vn letter dattorney a vn

Also if a man letteth land to another for terme of yeares, albeit the lessor dieth before the lessee entreth into the tenements, yet he may enter into the same tenements after the death of the lessor, because the lessee by force of the lease, hath right presently to haue the tenements according to the forme of the lease, but if a man maketh a deed of Feoffment to another, & a letter of Attorney to

¶ Et

yome a deliuerer a luy seisin per force de meisme le fait, uncore si liuerie de seisin ne soit fait en la vie celuy que fesoit le fait, ceo ne vault riens, pur ceo que lauter nad pas ascun droit dauer les tents solonq̃ le purport de le dit fait, deuant le liuerie de seisin. Et si nul liuerie de seisin soit fait, donq̃ apres le mort celuy que fist le fait, le droit de tiels tenements est maintenant en son heire, ou en ascun auter.

one to deliuer to him seisin by force of the same deed, yet if liuery of seisin be not executed in the life of him which made the deed, this availeth nothing, for that the other had nought to haue the tenements according to the purport of the said Deede before liuery of seisin made, & if there be no liuery of seisin, then after the decease of of him who made the Deed, the right of these tenemẽts is forthwith in his heire, or in some other.

¶ *Et vn letter dattorney a vn home a deliuer a luy seisin per force de mesme le fait.* Here first it appeareth that the Authority to deliuer seisin (as hath beene said) must be by Deede; for Letter dattorney is as much as a warrant of Attorney by Deede for Littere dos signifie sometime a Deed as litteræ acquietanciæ dos signifie a Deede of Acquittance, and herewith (a) agreeth Britton.

Vid. Sect. 196.

(a) 24.E.3.27.11.H.7.13. *Britt.* 101.b.

2. Littleton here speakes generally a vn home, and few persons are (b) disabled to be priuate Attorneys to deliuer seisin; for Mounks, infants, feme coverts, persons attainted, outlawed, excommunicated, villeins, aliens, &c. may bee Attorneys. A feme may be an Attorney to deliuer seisin to her husband, and the husband to the wife, and he in the remainder to the lessee for life.

21.E.4.18. *Br. feoffments.* 50 21.H.6.30. 13.E.3. *Attorney* 73.

3. It appeareth here that the Attorney must (c) pursue his warrant, otherwise he doth not deliuer seisin by force of the Deed, as Littleton speaketh. And his Authority is twofold, expressed in his warrant, and implied in Law, both which he must pursue and first of his expresse authority. A man seised of blacke acre and whyte acre makes a Deede of feoffment of both, and a letter of Attorney to enter into both acres, and to deliuer seisin of both of them according to the forme and effect of the Deede, and he entreth into blacke acre and deliuers seisin secundum formam cartæ, this liuery and seisin is good, albeit he did not enter into both, nor into one in the name of both, for when he deliuereth seisin of one secundum formam cartæ, this is tantamount and implieth a liuery of both. So when the feoffment is made to two or more, and the Attorney is to make liuery of seisin to both, and the Attorney make liuery of seisin to one of the Feoffees secundum formam & effectum cartæ, this is good to both, and yet in that case he that is absent may wauue the liuery. If Lessee for life make a Deede of feoffment and a letter of Attorney to the Lessor to make liuery, and the Lessor maketh liuery accordingly, notwithstanding he shall enter for the forfeiture, but if Lessee for yeares make a feoffment in fee and a letter of Attorney to the Lessor to make liuery and he make liuery accordingly, this liuery shall binde the Lessee, and shall not be auoided by him; for the Lessor cannot make liuery as Attorney to the Lessee, because he had no freehold, whereof to make liuery, but the freehold was in the Lessee. If the Lessor make a deed of Feoffment, and a letter of Attorney to the Lessee for yeares to make liuery, and he doth it accordingly, this shall not determine by extinguish his terme, because he did it as a minister to another, and in another right, and is accounted in iudgement of law to the act of the other and the Feoffee claimeth nothing by him.

(c) 12. *Ass. pl.* 24 26. *Ass.* 39. 11.H.4.3. 10.H.7. 11.H.7.13. 40. *Ass.* 38. 27. *Ass.* 61. 41. *Ass.* 10. 41.E.3.17.

Tr. 7. *Eliz. in com. banco.*

If one as Procurator or Attorney to another present to his owne benefice, he putteth himselfe out of possession, because he commeth in by the induction and institution of the Ordinary. If the tenant deuise that the Lord shall sell the land, and dieth, and the Lord selleth it, the Seignory remaine. But if the Lord or a grantee of a Rent charge had beene also Ce' que vse of the land and after the statute of R.3. and before the statute of 27.H.8. Ce' que vse had made a feoffment in fee of the land, albeit the land passeth from the Feoffee, and his feoffment is warranted by the power giuen to him by the statute, yet the Seignory or rent charge is extinct by his feoffment, for that he hath not a like Authority as the Attorney hath.

17.E.3.61.

If a man be disseised of blacke acre and whyte acre, and a warrant of Attorney is made to enter into both and to make liuery, there if the Attorney enter into blacke acre only and make liuery secundum formam cartæ there the liuery of seisin is void, because he hath lesse then his Warrant for the estate of the disseisor in whyte acre cannot bee deuested without an entry.

But

But there is a diuersitie betweene an authoritie coupled with an interest, and a bare authoritie. For example, A customs within a maunor time out of mind of man vsed, was to grant certaine lands parcell of the said maunor in fee simple, and neuer any grant was made to any, and the heires of his bodie, for life or for yeares; and the Lord of the said maunor did grant to one by Copie for life, the remainder ouer to another, and the heires of his bodie: And it was (k) adiudged, that the grant and remainder ouer was good; for the Lord hauing authoritie by custome, and an interest withall, might grant any lesser estate: for in this case, the customs that enableth him to the greater, enableth him to the lesser, Omne maius in se, continet minus. But hee that hath but a bare authoritie, as he that hath a warrant of Atturney, must pursue his authority, (as hath been said) and if he doe lesse, it is voyd.

(k) Hil. 36. El. Rot. 492. Inter Stanton & Barne, in Ejectione firmæ in the Kings bench

A man make a lease for life, and after make a Charter of feoffement, with a Letter of Attorney to deliuer seisin, the Atturney enters vpon the Lesse, this is sufficient to conuey away the reuersion; for (that it may be said once for all) liuerie of seisins being to perfect the common assurance of lands, is alwayes expounded fauourably, vt res magis valeat quam pereat. And all this was adiudged and (l) resolued by the Court of Common Pleas, and after affirmed by all the Iudges of the Kings Bench, in a writ of Error.

2. & 3. Ph. & M. Dyer 131. 17. El. Dyer 340.

(l) Pasc. 31. El. Rot. 514. in Com. Banc. inter Carter pl. & Cleypole & al. def. In Ejectione firmæ, & in Briefe de Error. Mil 32. El. Rot. 791.

And it is to be knowne, that a deed of feoffement beginning Omnibus Christi fidelibus, &c. or Sciant præsentes & futuri, &c. or the like, a Letter of Atturney may bee contained in such a Deed; for one continent may containe diuers Deeds to seuerall persons, but if it be by Indenture betweene the Feoffor on the one part, and the Feoffee on the other part, there a Letter of Atturney in such a Deed is not good, vnlesse the Atturney bee made a partie in the Deed indented.

Now the authoritie of an Atturney implyed in the Law, is, though the Warrant bee generall, to deliuer seisin: yet the Atturney cannot deliuer seisin within the view, for his warrant is intendable in Law of an actuall and expresse liuerie, and not of a liuerie in law, and so hath it beene resolued. See more hereof here next following.

Pasc. 3. El. in Com. Banc. in Yarhams case.

¶ *Vncore si liuerie & seisin ne soit fait en la vie celuy que fesoit le fait.* Here albeit the Warrant of Atturnie be indefinite, without limitation of any time, yet the Law prescribeth a time, as Littleton here saith, in the life of him that made the Deed: but the death not onely of the Feoffor, of whom Littleton speaketh, but of the feoffee also, is a countermand in Law, of the Letter of Atturney, and the Deed it selfe is become of none effect, because in this case nothing doth passe before liuerie of Seisin. For if the Feoffor dieth, the Land descends to his heire, and if the Feoffee dieth, liuerie cannot be made to his heire, because then hee should take by purchase, where heires were named by way of limitation. And herewith agreeth Bracton, Item oportet, quod donationem sequatur rei traditio, etiam in vita donatoris & donatarij. Therefore a Letter of Attorney to deliuer Liuerie of Seisin after the decease of the Feoffor, is voyd.

22. H. 6. 6.

Bract. li. 2. fo. 16. 40. ass. pl. 38 29. H. 6 7. a. 14. E. 4. 2. 18. E. 3. 16. b.

Fourthly, In all cases the Atturney must pursue the warrant in substance and effect, that he hath to deliuer Seisin.

11. H. 7. 13. &c.

Fiftly, All this is to be vnderstood of sole persons, or of a Corporation or bodie consisting of one sole person, or a Bishop person, &c. But it holdeth not in a Corporation aggregate of many persons capable. And therefore if a Maior and Commonaltie make a Charter of feoffement, and a Letter of Attorney to deliuer Seisin, the Liuerie of Seisin is good after the decease of the Maior, because the Corporation neuer dieth. The like of a Deane and Chapter, Et sic de similibus.

18. H. 8. 3. 11. H. 7. 19.

Lastly, If the Lessor by his Deed licence the Lessee for life or yeares, (which is restrained by condition not to alien without Licence) to alien, and the Lessor dieth before the Lessee doth alien, yet is his death no countermand of the licence, but that he may alien, for the licence exempteth the Lessee out of the penaltie of the Condition, and it was executed on the part of the Lessor as much as might be. And so was it resolued, Michael. 3. Iacob. in Communi Banco. But if the King doth Licence to alien in Mortmaine, and dieth, the Licence may bee executed after.

Mich. 3. Ia. in Com. Ban. & F. N. B. 223. 2. E. 3. Offic. de Cowt. 29. Stamf. Prer. 30.

Sect. 67.

¶ *Si le Lessee fait waste. Waste*, Vastum dicitur à vastãdo, of wasting and depopulating: and for that waste is often alledged

C Item si Tenements soient lesseg a vn home p̃ terme de demy an, ou pur le

ALso if tenements be let to a man for terme of halfe a yeare, or for a quarter of a

quarter de vn an, &c. En tiel caſe, ſi l'leſſee fait waſt, l'leſſor auera enuers luy briefe de waſt, & le Briefe dirra, Quod tenet ad terminum annorum: Mes il auera vn ſpeciall Declaration ſur le veritie de ſon matter, & le Count nabatera le Briefe, pur ceo que il puit auer nul auter briefe ſur le matter.

yeare, &c. In this caſe if the Leſſee commit waſt, the Leſſor ſhall haue a Writ of Waſte againſt him; and the Writ ſhall ſay, *Quod tenet ad terminum annorum*: but he ſhall haue an eſpeciall declaration vpon the truth of his matter, and the Count ſhall not abate the Writ, becauſe he cannot haue any other writ vpon the matter.

ged to be in timber, which we call in Latin Maremium, or mareſnium, or mareſmium, it is good to fetch both of them from the originall. Firſt, Timber is a Saxon word. Secondly, Maremium is derined of the French word Marreim, or Marrein, which properly ſignifieth timber.

An Action of waſt doth lie againſt tenant by the Curteſie, tenant in Dower, tenant for life, for yeares, or halfe a yeare, or gardein in Chiualry, by him that hath the immediate eſtate of inheritance, for waſt or deſtruction in houſes, gardens, woods, trees, or in lands, meadows, &c. or in exile of men to the diſheriſon of him in the reuerſion or remainder. *V. Merib. ca. 23. 2. part of the Inſtit.*

There be two kinds of Waſts, viz. Voluntarie or actuall, and permiſſiue. (a) Waſt may be done in houſes, by pulling or proſtrating them downe, or by ſuffering the ſame to be vncouered, whereby the ſparres or rafters, plaunchers, or other timber of the houſe are rotten. (b) But if the houſe be vncouered when the Tenant commeth in, it is no waſt in the Tenant, to ſuffer the ſame to fall downe. But though the houſe be ruinous at the tenants comming in, yet if hee pull it downe, it is waſt vnleſſe he re edifie it againe. (c) Alſo if glaſſe windowes (though glaſed by the tenant himſelfe) be broken downe, or carried away, it is waſt, for the glaſſe is part of his houſe. And ſo it is of wainſcote, benches, dores, windowes, furnaces, and the like, annexed or fixed to the houſe, either by him in the reuerſion, or the tenant.

(a) 34. H. 3. Waſt. 145.

(b) 40. aſſ. p. 22. 2. Mar. Dyer 117. 23. H. 6. 24 10. H. 7. 2 44. E. 3. 44. 39. E. 3. 33. 1. 4. fo. 63 Herlakendes caſe.

(c) 22. H. 6. 18. 12. H. 8. 1. 13. H. 7. 21. 21. E. 4. 18. 21. E. 4. 39. 10. H. 7. 2. Reg. Iudic. 26.

(d) Though there bee no timber growing vpon the ground, yet the Tenant at his perill muſt keepe the houſes from waſting. If the Tenant doe or ſuffer waſt to be done in houſes, yet if he repaire them before any Action brought, there lieth no action of waſt againſt him, but he cannot plead, Quod non fecit vaſtum, but the ſpeciall matter.

(d) 44. E. 3. 21. 38. aſſ. 1. 4. E. 3. Waſt. 22. 10 El Dyer 276. li. 3. fo. 119. in Woolpdales caſe. 10. E. 3. Waſt. 30. 44 E. 3. 44

A wall vncouered when the tenant commeth in, is no waſt if it be ſuffred to decay. (e) If the tenant cut downe or deſtroy any fruit trees growing in the garden or orchard, it is waſt, but if ſuch trees grow vpon any of the ground which the Tenant holdeth out of the garden or Orchard, it is no waſt.

(e) 7. H. 6. 38. 44. E. 3. 44.

(f) If the Tenant build a new houſe, it is waſt, and if he ſuffer it to be waſted, it is a new waſt. (g) If the houſe fall downe by tempeſt, or be burnt by lightning, or proſtrated by enemies, or the like, without a default of the Tenant, or was ruinous at his comming in, and fall downe, the Tenant may build the ſame againe with ſuch materialls as remaines, and with other timber which he may take growing on the ground for his habitation, but hee muſt not make the houſe larger than it was. If the houſe be diſcouered by tempeſt, the tenant muſt in conuenient time repaire it.

(f) 42 E. 3. 21. 49. E. 3. 2. 9 H. 6. 52. 17. E 2. Waſt 118.

(g) Li 4. fo. 63. Her akendens caſe. 43. E. 3. 6. 26 E. 3 76. 11. H. 4. 32. 12. H 4. 5. 22. H. 6. 18. 19. E. 3. waſt. 30.

(h) If the Tenant of a Doue houſe, Warren, Parke, Viuarie, Eſtangues, or the like, doe take ſo many, as ſuch ſufficient ſtore be not left as he found when he came in, this is waſt, and to ſuffer the pale to decay, whereby the Ders are diſperſed, is waſt.

(h) Temps E. 1. Waſt. 128. Brit. fo. 34 5. R. 2. Waſt. 97. 12. H. 8. 1. Pl. Com. 322. 7. H. 3. Waſt. 141.

And it is to be obſerued, That there is waſt, deſtruction, and exile. Waſt properly is in houſes, gardens, (as is aforeſaid) in timber trees, (viz. Oke, Aſhe, and Elme, and theſe be Timber trees in all places) either by cutting of them downe, or topping of them, or doing any Act whereby the timber may decay. Alſo in Countries where timber is ſcant, and Beeches or the like are conuerted to building for the habitation of man, or the like, they are alſo accounted timber. (i) If the Tenant cut downe timber trees, or ſuch as are accounted timber, as is aforeſaid, this is waſt, and if he ſuffer the young germyns to be deſtroyed, this is deſtruction. (k) So it is, if the Tenant cut downe vnderwood, (as he may by law) yet if he ſuffer the young germins to be deſtroyed, or if he ſtubbe vp the ſame, this is deſtruction.

(i) 22. H. 6. 12. a. 9. H. 6. 1 66 11. H. 6. 1. F. N. B. 59. m.

(k) 10. E. 3. Waſt. 32. 10. H. 7 2. 42. E. 3. 6. b. 5. E. 4. 100. 41. E. 3. Waſt. 82. 20. Edw. 3. Waſt. 32. 12. E. 4. 1.

(l) Cutting downe of willoughes, beech, birch, aſpe, maple, or the like, ſtanding in the defence and ſafeguard of the houſe, is deſtruction. (m) If there be a quickeſet Fence of white thorne, if the tenant ſtubbe it vp, or ſuffer it to be deſtroyed, this is deſtruction, and for all theſe and the like deſtructions, an action of waſt lieth. (n) The cutting of dead wood, that is, vbi arbores ſunt aridæ, mortuæ, cauæ, non exiſtent maeremium, nec portantes fructus, nec folia in æſtate, is

(l) 40. E. 3. 15. b. & 35. 12. E. 4. 1. 12. H. 8. 1. b. 10. H. 7. 2. 8. E. 2. Waſt. 111. 4. E. 6. Waſt. Br. 136.

(m) 46. E. 3. 17. 9. H. 6. 10. 12. H. 8. 1.

(n) 16. El. Dy. 332. 20. E. 3. Waſt. 32. F. N. B. 59. m.

no waſt; but turning of trees to coles for fewel, when there is ſufficient dead wood, is waſt.
(o) If the Tenant ſuffer the houſes to be waſted, and then fell downe timber to repaire the ſame, this is a double waſt. (p) Digging for grauell, lime, clay, bricke, earth, ſtone, or the like, or for mines of mettall, cole, or the like, hidden in the earth, and were not open when the tenant came in, is waſt; but the Tenant may dig for grauell or clay for the reparation of the houſe, alſo he may take conuenient timber trees.

(q) It is waſt to ſuffer a wall of the ſea to be in decay, ſo as by the flowing & reflowing of the ſea, the meadow or marſh is ſurrounded, whereby the ſame becomes vnprofitable: but if it be ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind, tempeſt, or the like, without any default in the tenant, (r) this is no waſt punishable. So it is, if the Tenant repaire not the bankes or walls againſt riuers, or other waters whereby the meadowes or marſhes be ſurrounded, and become ruſhie and vnprofitable.

(ſ) If the Tenant conuert erable land into wood, or è conuerſo, or meadow into erable, it is waſte; for it changeth not only the courſe of his husbandry but the profit of his eſtate.

(t) The tenant may take ſufficient wood to repaire the walls, pales, fences, hedges and ditches, as he found them, but he can make no newe: and he may take alſo ſufficient plowbote, firebote, and other housbote.

The tenant cutteth downe trees for reparations and ſelleth them, and after buyeth them againe, and imploy them about neceſſary reparations, yet it is waſte by the bendition: her cannot fell trees and with the money couer the houſe; burning of the houſe by negligence or mischance is waſte

(u) If a man make a Leaſe for life and by Deed grant that if any waſte or deſtruction be done, that it ſhall be redreſſed by neighbours, and not by ſute or plea, notwithſtanding an action of waſte ſhall lye, for the place waſted cannot be recouered without a plea.

(w) Bracton, Fleta and Britton, doe vſe the ſame diuiſion as is aforeſaid, viz. Vaſtum, deſtructio, & exilium, in their proper ſignification.

Now ſomewhat is to be ſpoken of Exile or deſtruction of men; Exile or deſtruction of Villetnes, or Tenants at will, or making them poore where they were rich when the Tenant came in, whereby they depart from their tenures, is waſte. (a) And yet the ſtatute of Glouc. ſpeaketh not of exile, but it is comprehended vnder the generall word of Waſte. The ſtatute of W.1. hath deſtructionem, the ſtatute of Magna Carta hath Vaſtum & deſtructionem, the ſtatute of Merlebridge hath vaſtum, venditionem & exilium in domibus, boſcis, vel hominibus, &c.

But waſte and deſtruction in their larger ſence are words conuertible. (b) Item de hoc quod dicit vaſtum & exilium, ſciendum eſt quod non ſunt referenda ad eundem intellectum, ſed vaſtum & deſtructio fere idem ſunt, vaſtum idem eſt quod deſtructio, & é conuerſo, & ſe habent ad omnem deſtructionem generaliter.

(c) Vaſtum autem & deſtructio fere equipollent & conuertibiliter ſe habent in domibus, boſcis, & gardinis, ſed exilium dici poterit, cum ſerui manumittantur & à tenementis ſuis iniuriosè eijciantur, fortuna autem & ignis vel huiuſmodi euentus inopinati omnes tenentes excuſant.

(d) No perſon ſhall haue an action of waſte, vnleſſe he hath the immediate ſtate of inheritance, but ſometime another ſhall ioyne with him for conformity. As if a reuerſion be granted to two and to the heires of one; they two ſhall ioyne in an action of waſte: and in like ſort the ſurviuing Copercener, and the tenant by the Curteſie ſhall ioyne in an action of waſte: and if two ioyntenants be, and to the heires of one of them, and they make a Leaſe for life, they ſhall ioyne in an action of waſte. (e) If the eſtate taile determine, hanging the action of waſte, and the plt. become tenant in taile after poſſibilitie, the action of waſte is gone. (f) If the Tenant doth waſte, and he in the reuerſion dieth, the heire ſhall not haue an action of waſte for the waſte done in the life of the Anceſtor; nor a Biſhop, maſter of an Hoſpitall, Parſon, or the like in the time of the Predeceſſor. (g) And ſo if Leſſee for yeares doth waſte, and dieth; an action of waſte lyeth not againſt the Executor or Adminiſtrator, for waſte done before their time. But if two Coperceners be of a reuerſion, and waſte is committed, and the one of them die, the Aunt and the Neece ſhall ioyne in an action of waſte.

(h) If lands be giuen to two and the heires of one of them, he that hath the Fee ſhall not haue an action of waſte vpon the ſtatute of Glouc: for that they are ioyntenants, but his heire ſhall haue an action of waſte againſt tenant for life.

Note after waſte done there is a ſpeciall regard to be had to the continuance of the reuerſion in the ſame ſtate that it was at the time of the waſte done, for if after the waſte he granteth it ouer, though he taketh backe the whole eſtate againe, yet is the waſte diſpunishable. So if he grante the reuerſion to the vſe of himſelfe and his wife, and of his heires, yet the waſte is diſpunishable, and ſo of the like, becauſe the eſtate of the reuerſion continueth not, but is altered, and conſequently the action of waſte for waſte done before (which conſiſt in priuity) is gone.

(i) A Prohibition of waſte did lye againſt Tenant by the curteſie, Tenant in dower, and a gardian in Chiualry by the Common Law, but not againſt tenant for life, or yeares, becauſe they

(o) 44.E.3.44. 20.E.3. Waſt.32. F.N.B.59.b. 19.E.3.Waſt.30.
(p) 22.H.6.18.b. 9.E.4.35. 41 E.3.Waſt.82. 17.E.3.7. 9.H.6.66. 2.H.7.24. F.N.B.59.a & 149.c. 20.Ed.3. Waſt 32.
(q) Anno 6. El. Of the Report of Iuſtice Daliſon in Griſſins caſe. 17.E.3.65. B.11. fo.168.b.
(r) 20.H.6.1. F.N.B.59.n. 6.El. vbi ſupra.

(ſ) 28.H.8.Dyer 37. 22.H.6.24. 10.H 7.5.a. 44.E.3.44.
(t) 16.El. Dy.332. 21.H.6. 47. L.5.E.4.100. 12.E.3. Waſt.28. 48.E.3.25. Temps E.1.123. 20.E.3 Waſt.32. 19.E.3.Waſt.30.

(u) 3.E.3 Waſt.5. Bracton lib.4.fo.315.

(w) Bracton fo.168. Fleta.lib.1.cap.11. 16.H.3.waſt.135. 3.E.2. tit. Weſt.2. 17.E.2.Waſt.118. 10.H.7. 2.H.6.11. 9 H.6.52. 11.E.2.Waſt.113. F.N.B. 56.H. & 55.c. Regiſt.iudic.25.
(a) Glouc.cap.5. W.1.ca.21. Magna Carta.cap.4. Merleb.ca.23.
(b) Bract.lib.4.fo.316. & 317.
(c) Fleta lib 1.ca.11.

(d) 7.E.3.54.b.2.H.5.7. 22.H.6.24. 13.H.7. 27.H.8.13. F.N.b. 59.f. 8.R.2.Waſt.147.

(e) 2.H.4.22.
(f) 2.H.4.2.

(g) 10.E.4.1. 49.E.3 25. 2 3.H.8.tit.Waſt.Br. 38.E.3.17. 44.E.3.8. 45.E.3.3. 46.E.3.31. 11.E.2.Waſt. 115. 2.Mar.waſt.117. 8.E.2.waſt.110.
(h) 24.E.3.27. 50.E.3.3. 8.H.6.13.
(i) Bract.lib.4 f.315.316.317 Fleta lib.1.ca.11. Brits. fo.168. Doct. & Stud.lib.2.cap.1. 12.H.4.3. 10.H.3. Waſt.142 20.H.6.1. 4 H.3.Waſt.140. 9.H.3. tit.136.

they came in by their owne act, and he might haue prouided that no waste should be done. (i) A tenant by the curtesie or in dower can hold of none but of the heire, and his heires by discent, and therefore if they grant ouer their whole estate, and the grantee doth waste, yet the heire shall haue an Action of waste against them, and recouer the land against the assignee: but if the heire either before the assignement had granted, or after the assignement doth grant the reuersion ouer, the stranger shall haue an Action of waste against the assignee, because in both Cases the priuitie is destroyed: in all other Cases the Action of wast shall be brought against him that did the waste (for it is in nature of a trespasse) vnlesse it be in the case of a Ward (k) for there if the Gardian doth wast and assigne ouer, the action lieth against the assignee (l). A Gardian shall not be punished for waste done by a stranger, it is so penall vnto him, for he shall lose the Wardship both of the bodie and of the land, though the waste be but to the value of twentie shillings, and if that sufficeth not to satisfie for the wast, then he shall recouer damages of the waste, ouer and aboue the losse of the Ward. But tenant by the curtesie, tenant in dower, tenant for life, yeares, &c. shall answere for the waste done by a stranger, and shall take their remedie ouer. (m) But if there be two ioyntenants of a Ward, and one of them doe waste both shall answer for it.

(n) If the Gardian doth waste and the heire within age bring an action of waste, the Gardian shall lose the wardship as is aforesaid, but if the heire bring an action of waste at his full age, then he shall recouer treble damages, for then he cannot lose the wardship.

(o) An infant and Baron and Feme shall be punished for waste done by a stranger, and so shal the wife that hath the state by suruiuour, for wast done by the husband in his life time, if she agree to the Estate, though there hath beene varietie of opinions in our Bookes.

(p) But if Feme tenant for life take husband, and the husband doth waste, and the wife dieth, no Action of waste lieth against the husband in the tenuit, for he was seised but in iure vxoris and his wife was tenant of the freehold, but if a Feme bee possessed of a terme for yeares, and take husband, and the husband doth waste, and the wife dieth, the husband shall be charged in an Action of waste, for the Law giueth the terme to him.

(q) If tenant for life grant ouer his Estate vpon condition, and the grantee doth waste, and the Grantor re-entreth for the condition broken, the Action of waste shall bee brought against the grantee, and the place wasted recouered.

(r) If a lease for life be made to a Villaine, and waste is done, the Lord entreth, he shall not be punished for the waste done before, but for waste done after he shall.

(s) An occupant shall be punished for waste, and so if an Estate bee made to A. and his heires during the life of B. A. dieth, the heire of A. shall be punished in an Action of waste.

(t) If a lease be made to A. for life, the remainder to B. for life, the remainder to C. in fee in this case where it is said in the Register, and in F.N.B. that an Action of waste doth lie, it is to be vnderstood after the death or surrender of B. in the meane remainder for during his life, no Action of waste doth lie.

But if a lease for life be made, the remainder for yeares, the remainder in fee, an Action doth lie presently during the terme in remainder for the meane terme for yeares is no impediment.

But if a man make a lease for life or yeares, and after granteth the reuersion for yeares, the Lessor shall haue no Action of waste during the yeares, for he himselfe hath granted away the reuersion, in respect whereof he is to maintaine his Action. (*) Otherwise it is, if hee had made a lease in reuersion which had beene but a future interest, for there an action of waste lieth during the terme, and so is the Booke to be vnderstood, and terme shall be saued in that case.

(u) No action of waste lieth against a garden in socage, but an account or trespasse, nor against tenant by statute, staple, &c. or elegit.

(w) If tenant for life or yeares or their assigne make a grant ouer, and notwithstanding take the profits, an action of waste lieth against him, by him in the reuersion or remainder by the statute, Nota.

(x) If waste be done sparsim here and there in woods, the whole woods shall be recouered, or so much wherein the waste sparsim is done. And so in houses so many roomeths shall be recouered wherein there is waste done, but if wast be done sparsim throughout, all shall bee recouered. It hath bin said that if the hall be wasted, the whole house shall be recouered, because the whole house is denominated of the hall: but later Authorities is to the contrarie.

(y) There is waste of a small value, as Bracton saith, Nisi vastum ita modicum sit propter quod non sit inquisitio facienda. Yet trees to the value of three shillings and foure pence, hath bin adiudged waste, and many things together may make waste to a value. But let vs now returne to our Authour.

(i) *F.N.B.*56.*a.et f. Temps E.*1.*Wast.*122.18.*E.*3. 3.30.*E.*3.16.38.*E.*3.23.11. *H.*4.18.4.*E.*3.25.*Regist.*72. *lib.*3.*fol.*23.*Walkers case. lib.*9.*fol.*142.*Beaumonts case.*

(k) 27.*E.*3.81.26 *E.*3. *Waste.*10.

(l) 12.*H.*4.3.*Bract. lib.*3. 315.317.*Flet. lib.*1.*cap.*11. *Brit.*168.34.*E.*3.*Wast*146. 44.*E.*3.27. *F.N.B.*59.*a.*& 60.*g* & *I.*

(m) 33.*E.*3.*Waste.*5.

(n) 44.*E.*3.27.48 *E.*3.10. *F.N.B.*60.*I.*12.*H.*4.3. 19.*I.*2.*Wast.*117.41.*E.*3. *Wast.*81.3.*E.*2.*Waste.*3. 7.*E.*3.12.

(o) 15.*H.*3.*Wast.*16.*Temps E.*1.*Wast.*128.2.*H.*4.3.a. 3.*E.*3.13.76.11.*Ass.*11. 21.*H.*6 24.*b.*33.*H.*6.31.*a.* 42 *E.*3.22.19.*E.*3.*breue* 246 46.*E.*3.25.7*H.*6.2.*b.*3.*E.*3. 46.10.*F.*3.17.18.9.*E.*3. 42.9.*E.*3.*breue* 246.17.*E.*4. 7.9.*H.*6.52.*P.N.B.*36.*b. Dect. & Stud. lib.*2.*cap.*1. 23.*H.*8.*Wast.*138.*lib.*8.*fol.* 44.*Willingbams case.*

(p) *Lib.*5.*fol.*75.*Clftons case* 46.*E.*3.25 46.*E.*3.*Wast. Stratham.*10.*H.*6.11.12.

(q) 30.*E.*3.16.

(r) 48.*E* 3.19.

(s) *Lib.*6.*fol.*37.*le Deane and Chapter of Worcest. case. lib.*10.*fol.*9.*b.*

(t) 4.*E.*3.18.*Cotes case.*3.*E.* 3.18 *F.N.B.*58.*c.*& 59 *b.* 50.*E.*3.3.33.*E.*3.*Wast.*144 11.*E.*3.*resceit.*118.10.*E.*4.9 *Regist.*74.*lib.*2.*fol.*92.*inter Paget & Carie in Englams case. lib.*5 *fol.*76.*Pagets case. l b.*12.*fol.*44.*Icons gs case. F.N.B.*59.*b.*4.*E* 3.18.

(*) 4.*E.*3.18.*F.tit. Waste.*18.

(u) *Merlbridge cap.*17.21.*E.* 3.30.16.*E.*3.*tit. waste.*100. 14.*E.*3 *waste.*107.2.*E.*2. *Wast.*1.28.*H.*6.*waste.*9.32. *H.*6.7. *F.N.B.*59.*E.*

(w) 11.*H.*6.*cap.*3. *Lib.*5.*fol.*77.*Bonthes case.*

(x) 8.*E.*2.*waste.*112.4.*E.*6. *waste.*136.4.*E.*3.32.15.*H.*7. 11.15.*E.*3.*Wast.*134.*Temps E.*1.*waste.*134.18.*H* 8.1.

(y) *Bract. lib.*4.*fol.*316. 38.*E.*3.7 *b.*34.*E.*3.*waste.*246 14.*H.*4.11.*b. F.N.B.*60 *c. Temps E.*1.*waste.*124. 19,*H.*6.8.

¶ *Brief de waste.* **See in the Register fiue seuerall Writs of** waste; Two At the Common Law for waste done by Tenant in Dower, or the Garden, and Three by speciall or statute law, for waste done by tenant for life, for yeares and tenant by the curtesie.

(z) *Vi. Bract. lib. 5. fo. 413. b. Fleta lib. 2. cap. 12. See the second part of the Institutes. W. 2. cap. 24.*

Brief dirra. The writs originall of the Register (z) (as Bracton saith) formed, and of course had their first authoritie by Act of Parliament, and therefore without an Act of Parliament they cannot be altered, or changed, which is proued by the statute of W. 2. cap. 24. whereby remedie is prouided in many cases. But heare what Bracton saith. Sunt quædam breuia formata in suis casibus, & quædam de cursu, quæ concilio totius regni sunt approbata, quæ quidem mutari non possunt, absque eorundem contraria voluntate. Magistralia autem sæpe variantur secundum varietatem casuum, &c. And this is the reason that in this case of halfe a yeare the words of the writ shall be without change, Quod teneat ad terminum annorum, and the pl' must make a spectall declaration according to his case, for otherwise hee should bee without remedie. In this particular case the statute of Gloue cap. 5. which giueth the Action of waste against the Lesse for life or yeares (which lay not against them at the Common Law) speaketh of one that holdeth for tearme of yeares in the plurall number, and yet here it appeareth by the authoritie of Littleton. That although it be a penall Law, whereby treble damages and the place wasted shall be recouered, yet a tenant for halfe a yeare being within the same mischiefe, shall be within the same remedie, though it be out of the letter of the Law, for Qui hæret in littera, hæret in cortice, which is an excellent example, whereupon in many like cases a man may settle a certaine iudgement. You may obserue in the said ancient Authors, what remedie was giuen for waste at the Common Law, and against whom, and what was adiudged waste, destruction, and exile.

De vasto. Bract. lib. 4. fol. 315. 316. 317 Fleta. lib. 1. cap. 11. & lib. 5. cap. 33. Brit. fol. 162. & 168 46. E. 3. 31. F. N. B. 60. e. 4. E. 4. 13. 37. H. 6. 26. b. 7. H. 7. 2. 14. H. 8. 12. 18. E. 3. 27.

Vide Marlebridge cap. 23. 2. part of the institutes.

In many cases a tenant for life or yeares may fell downe timber to make reparations, albeit hee be not compellable thereunto, and shall not bee punished for the same in any action of waste. As (a) if a house be ruinous at the time of the lease made, if the lesse suffer the house to fall downe he is not punishable, for he is not bound by law to repaire the house in that case. And yet if he cut downe timber vpon the ground so letten, and repaire it, he may well iustifie it, and the reason is, for that the law doth fauour the supportation and maintenance of houses of habitation for mankind. And therefore if two or more ioyntenants or tenants in common be of a house of habitation, and the one will not repaire the house, the other shall haue by the law a writ De reparatione facienda, and the writ saith, Ad sustentationem eiusdem domus teneantur. So it is if the Lessor by his Couenant vndertaketh to repaire the houses, yet the lesse (if the Lessor doth it not) may with the timber growing vpon the ground repaire it though hee be not compellable thereunto. In the same manner, if a man make a lease of a house and land without impeachment of waste for the house, yet may the lesse with the timber vpon the ground repaire the house, though he may vtterly waste it if he will, and so in many other cases. A man hath land in which there is a Mine of Coales, or of the like, and maketh (b) a lease of the land (without mentioning any Mines) for life or for yeares, the lesse for such Mines as were open at the time of the lease made, may digge, and take the profit thereof. (c) But he cannot digge for any new Mine, that was not open at the time of the lease made, for that should be adiudged waste. And if there be open Mines, and the Owner make a lease of the land, with the Mines therein this shall extend to the open Mines only, and not to any hidden Mine, but if there be no open Mine, and the lease is made of the land together with all Mines therein, then the lesse may digge for Mines, and enioy the benefit thereof, otherwise those words should be void. I haue beene the more spacious, concerning this learning of waste, for that it is most necessarie to be knowne of all men.

(a) 12. H. 8. 1.

F. N. B. fol. 127.

(b) 17. E. 3. 7. 9. H. 6. 56. 22. H. 6. 18. 9. E. 4. 35. 12. E. 4. 8. F. N. B. 149. e. & 59. n.

(c) *Lib. 5. fol. 12. Sanders case.*

Now hath Littleton spoken of an estate for life, and an estate for yeares in seuerall persons. Now let vs see how they stand simul and semel in one person.

If a man letteth lands to another for life, the remainder to him for 21. yeares, hee hath both estates in him so distinctly, as he may grant away either of them; for a greater estate may vphold a lesser, but non è conuerso, and therefore if a man make a lease to one for 21. yeares, the remainder to him for terme of his life, the lease for yeares is drowned.

(d) 19. E. 2. couenant. 25. 19. E. 3. couenant. 24. 32. E. 3. Quid iuris cl. 5. 17 E. 3. 29. 46. E. 3. 31. 40. E. 3. 5. 11. H. 4. 34. 14. Eliz. Dier. 309. M. 40. & 41 Eliz. in Communi Banco. Rot. 2215. in tresp. inter Sparke & Sparke.. Hill. 42. Eliz. Sir Iohn Sauages case in Curia Wardorum.

(d) If a man make a lease for life to one, the remainder to his Executors for 21. yeares, the terme for yeares shall vest in him, for euen as Ancestor and Heire are corelatiua, as to Inheritance (as if an estate for life bee made to A. the remainder to B. in taile, the remainder to the right heires of A, the fee vesteth in A, as it had beene limitted to him and his heires) euen so are the Testators and the Executors corelatiua as to any Chattell. And therefore if a lease for life be made to the testator, the remainder to his Executors for yeares, the Chattls shall vest in the lesse himselfe, as well as if it had beene limited to him and his Executors.

Chap. 8. Sect. 68.

Of Tenant at will.

Tenant a volũt eſt, ou terres ou tenements ſont leſſes per vn home a vn auter, a auer & tener a luy a la volunt le leſſor, y force de quel leaſe le leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceo que il nad aſcun certaine ne ſure eſtate, car le leſſor luy poit ouſter a quel temps que il luy plerroit: vncore ſi l' leſſee emblea l' terre & le leſſor apres lemblleer, & deuant q̃ les blees ſont matures luy ouſta, vncore le leſſee auera, l's blees, & aũra, frãk entr̃, egres & regres a ſcier & de carier les blees, pur c̃ q̃ il ne ſcauoit a quel temps le leſſor voloit ẽtre ſur luy. Auterm̃t eſt ſi tenãt pur terme dans q̃ conuſt le fine de ſon terme emblea ſa terre, & le terme eſt finy deuant que les blees ſont matures en ceo cas le leſſor, ou celuy en la reuerſion

A Tenant at will is, where lands or tements are let by one man to another, to haue and to hold to him at the wil of the leſſor, by force of which leaſe, the leſſee is in poſſeſſion, In this caſe the leſſee is called tenant at will, becauſe hee hath no certain nor ſure eſtate, for the leſſor may put him out at what time it pleaſeth him. Yet if the leſſee ſoweth the land, and the leſſor after it is ſowne, and before the corne is ripe put him out, yet the leſſee ſhall haue the corne, and ſhall haue free entrie, egreſſe and regreſſe to cut and carrie away the Corne, becauſe hee knew not at what time the leſſor would enter vpon him. Otherwiſe it is if Tenant for yeares, which knoweth the end of his terme, doth ſow the land, and his terme endeth before the corn is ripe; In this caſe the leſſor, or he in

Tenant a volunt eſt, ou terres ou tenements, ſont leſſes per vn home a vn auter, a auer & tener a luy a la volunt le leſſor, &c. It is regularly true that euery leaſe at will muſt in law bee at the will of both parties, and therefore when the leaſe is made, To haue and to hold at the will of the Leſſor, the law implyeth it to be at the will of the leſſee alſo; for it cannot bee only at the will of the Leſſor, but it muſt be at the will of the leſſee alſo. And ſo it is when the leaſe is made To haue and to hold at the will of the Leſſee, this muſt be alſo at the will of the Leſſor; and ſo are all the Bookes, that ſeeme prima facie to differ, cleerely reconciled.

Flet. lib. 3. cap. 15.

18. H. 6. 1. 38. H. 6. 21. 9. E. 4. 1. b. 10. E. 4. 18. b. 21. H. 7. 38. 13. H. 8. 16. 14. H. 8. 11. 14.

Pur ceo que il nad aſcun certaine ou ſure eſtate, &c. Alia poſſeſſio eſt præcaria & alia pro prece conceſſa vt ſi quis ſine ſcripto conceſſerit alicui habitationem vel vſumfructum in re ſua tenenda ad voluntatem ſuam hæc quidem poſſeſſio præcaria eſt & nuda eo quod tempeſtiue & intempeſtiue pro voluntate Domini poterit reuocari.

Flet. lib. 3. cap. 15.

Vncore ſi le leſſee emblea la terre, & le leſſor apres le embleer, &c. The reaſon of this is, for that the Eſtate of the Leſſee is vncertaine, and therefore leaſt the ground ſhould be barraine-red, which ſhould bee hurtfull to the Common-wealth, hee ſhall

shall reape the Crop which hee ſowed in peace, albeit the Leſſor doth determine his will before it be ripe. And ſo it is if he ſet roots, or ſow Hempe or Flax, or any other annuall profit if after the ſame bee planted, the Leſſor ouſt the Leſſee, or if the Leſſee dieth yet he or his Executors ſhall haue that yeares crop. But if he plant young fruit trees, or young Okes, Aſhes, Elmes, &c. or ſowe the ground with Acornes, &c. there the Leſſor may put him out notwithſtanding, becauſe they will yeald no preſent annuall profit. And this is not only proper to a Leſſee at will, that when the Leſſor determine his will that the Leſſee ſhall haue the Corne ſowne, &c. but to euery particular Tenant that hath an eſtate incertaine, for that is the reaſon which Littleton expreſſeth in theſe words (Pur ceo que il nad aſcun certeine ou ſure eſtate.) And therefore if Tenant for life ſoweth the ground, and dieth his Executors ſhall haue the Corne, for that his eſtate was vncertaine, and determined by the act of God. And the ſame law is of the Leſſee for yeares of Tenant for life. So if a man be ſeiſed of land in the right of his wife, and ſoweth the ground, and he dieth, his Executors ſhall haue the corne, and if his wife die before him he ſhall haue the Corne. But if husband and wife be ioyntenants of the land, and the husband ſoweth the ground and the land ſurviueth to the wife, it is ſaid (a) that ſhe ſhall haue the Corne. If Tenant pur terme dauter vie ſoweth the ground, and Ceſty que vie dieth, the Leſſee ſhall haue the Corne. If a man ſeiſed of lands in fee and hath iſſue a daughter and dieth his wife being enſeint with a ſonne, the daughter ſoweth the ground the ſonne is borne, yet the daughter ſhall (b) haue the Corne becauſe her eſtate was lawfull, and defeated by the act of God, and it is good for the Common wealth that the ground be ſowen. (c) But if the Leſſee at will ſowe the ground with Corne, &c. and after he himſelfe determine his will and refuſeth to occupie the ground, in that caſe the Leſſor ſhall haue the Corne becauſe he loſeth his Rent. And if a woman that holdeth land Durante viduitate ſua ſoweth the ground and taketh husband, (d) the Leſſor ſhall haue the emblements becauſe that the determination of her owne eſtate grew by her owne act. But where the eſtate of the Leſſee being incertaine is defeaſible by a right paramount, or if the Leaſe determine by the act of the Leſſee as by forfeiture, condition, &c. (e) There he that hath the right paramount, or that entreth for any forfeiture, &c. ſhall haue the Corne.

If a Diſſeiſor ſowe the ground and ſeuer the corne, and the Diſſeiſee re-enter (f) hee ſhall haue the corne becauſe he entreth by a former title, and ſeuerance or remouing of the corne altereth not the caſe, for the regreſs is a recontinuation of the freehold in him in iudgement of Law from the beginning.

(g) If tenant by ſtatute Merchant ſoweth the ground, and then a ſodaine and caſuall profit falleth by which he is ſatisfied, he ſhall haue the emblements.

¶ *Le leſſor luy puit ouſter.* **There is an expreſſe** ouſter, **and implied** ouſter, an expreſſe, as when the Leſſor commeth vpon the land, and expreſſly forewarneth the Leſſee to occupie the ground no longer; an implied, as if the Leſſor without the conſent of the Leſſee enter into the land and cut downe a tree, this is a determination of the will, for that it ſhould otherwiſe be a wrong in him, vnleſſe the trees were excepted, and then it is no determination of the will, for then the act is lawfull albeit the will doth continue. If a man leaſeth a Mannor at will whereunto a Common is appendant, if the Leſſor put in his beaſts to vſe the Common this is a determination of the will. The Leſſor may by actuall entrie into the ground determine his will in the abſence of the Leſſee, but by words ſpoken from the ground the will is not determined vntill the Leſſee hath notice. So more then the diſcharge of a Factor, Attorney, or ſuch like in their abſence is ſufficient in Law vntill they haue notice thereof.

(a) If a woman make a Leaſe at will reſeruing a Rent and ſhe taketh husband, this is no countermand of the Leaſe at will, but the husband and wife ſhall haue an action of debt for the Rent, and ſo it is if a Leaſe be made to a woman at will reſeruing a Rent and the Leſſee taketh husband this is no countermand of the Leaſe but the Leſſor may haue an action of debt or diſtreine them for the Rent: ſo if the husband and wife make a Leaſe at will of the wifes land reſeruing a Rent and the husband die, yet the Leaſe continueth: In like manner if a Leaſe be made by two to two others at will and the one of the Leſſors or of the Leſſees die the Leaſe at will is not determined in neither of thoſe caſes; which are neceſſarie points to be knowne.

¶ *Apres lembleer, & deuant que les blees ſont matures.* **Then put the** caſe that the corne is ripe and ready cut downe, and the Leſſor before the Leſſee reapeth it, enter, and put out the Leſſee, whither ſhall the Leſſee haue the corne? and it is without all queſtion that the Leſſee ſhall haue it, for by the ſame reaſon that he ſhall haue it when he is put out before it

18.E.4.18.

Temps E.1.br.25.
10.Aſſ.pl.6.
10.E.3.29.
46.E.3.1.
7.H.4.17.
7.Aſſ.19.
Lib.5.106. Olands caſe.

(a) *8.Aſſ.21.*
8.E.3.54.
Dier 316.

(b) *18 H.6.6.*
(c) *Lib.5.fo.106. Olands caſe.*
(d) *Olands caſe vbi ſupra.*

(e) *33.E.3.treſp.F.254.*
42.E.3.25.
Olands caſe.
Vbi ſupra.
(f) *27.H.6.1.37.H.6.6.*
12.E.4.45.14.E.4.6.
15.E.4.31.2.H.7.1.
5.H.7.17. 12.H.7.25.
10.H.4.1. 28.H.8.32.
Dier.
(g) *44.E.3.15.*
Fleta lib.3. cap.15.
(h) *35.H.6.24. 21 H.6.9.*
1.E.4.3. 21.E.4.5.
Tit.com. perſon de Hewlands caſe.

14.E 4.6.
8.E 4.11. &c.

(a) *Lib.5.fol.10. Henſtead's caſe.*
10.Eliz Dier.269.b.

it be ripe, he shall haue it when he is put out when it is ripe, Et vbi eadem est ratio, ibi idem jus.

¶ *Et auxi franke entrie, egres & regres.* (b) For when the Law doth giue any thing to one, it giueth impliedly whatsoeuer is necessary, for the taking and enioying of the same Quando lex aliquid alicui concedit, concedere videtur, & id sine quo res ipsa esse non potest, and the Law in this case giueth him not to an action for the corne, but giueth him a speedy remedy to enter into the land, and to take and carry it away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giueth all that which is conuenient, viz. free entrie egresse and regresse as much as is necessary.

(b) *Temps E.1.tit grant 4. 9.E.4.35. 5 E.3.tresp.15. 21 H.7.14 b 8.H.6.18.b. 2.R.2 barre.237. 14.H.8.2. 27.H.8.18.b.*

If the Lesse be disturbed of this way which the law doth giue vnto him, he shall haue his action vpon his case, and recouer his damages, and this action the law doth giue vnto him; for whensoeuer the law giueth any thing, it giueth also a remedy for the same. But here is to be obserued a diuersity, betweene a Priuate way, whereof Littleton here speaketh, and a common way. For if the way be a common way, if any man be disturbed to goe that way, or if a ditch be made ouerthwart the way so as he cannot goe, yet shall he not haue an action vpon his case, and this the law prouided for auoyding of multiplicity of suites, for if any one man might haue an action, all men might haue the like. But the law for this common nusance hath prouided an apt remedy, and that is by presentment in the Leete or in the Corne, vnlesse any man hath a particular damage as if he and his horse fall into the ditch whereby he receiued hurt and losse, there for this speciall damage which is not common to others, he shall haue an action vpon his case, and all this (c) was resolued by the Court in the Kings bench: And in that case it was said that it had beene adiudged in that Court betweene Westbury and Powell that where the Inhabitants of Southwarke had by custome a watering place for their cattell which was stopped vp by Powell that in that case any Inhabitant of Southwarke might haue an action, for otherwise they should be without remedy because such a nusance is not presentable in the Leete or Corne: Note the diuersitie.

(c) *27.H.8.27. 2.E.4.9. 5.E.4.2. Tr.41.Eliz. betweene Finneux and Honenden. Vid.lib.5.fo.72. Williams case.*

There be three kinde of wayes, whereof you shall (d) reade in our ancient bookes. First a foote way, which is called Iter, quod est jus eundi vel ambulandi hominis, and this was the first way.

(d) *Fleta lib.4.ca.27. Bracton.lib.4.fo.232.*

The second is a foote way and horse way, which is called actus ab agendo; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

The third is via or aditus which conteyne the other two, and also a cart way, &c, for this is jus eundi, vehendi, & vehiculum & iumentum ducendi; and this is twofold, viz. Regia via the Kings high way for all men, & comunis strata belonging to a Citie or Towne, or between neighbours and neighbours. This is called in our bookes chimin being a French word for a way, whereof commeth chiminage chiminagium, or chimmagium, which signifieth a Toll due by custome, for hauing a way through a Forest; and in ancient Records it is sometime also called Pedagium.

32.E.3 *barre* 261. 27.E.3.78. 6.E.3.23. *Carta de foresta cap.*14.

If the Lessee at will by good husbandrie and industry, either by ouerflowing or trenching, or compassing of the meadowes, or digging vp of bushes or such like make the grasse to growe in more abundance, yet if the Lessor put him out, the Lesse shall not haue the grasse, because that the grasse is the naturall profit of the earth. And the same law is if he doth sowe hay seed, and thereby encreaseth the grasse.

¶ *Autrement est de tener a terme dans que conust le fine de son terme, &c.* well said Littleton (which knoweth the end of his terms) that is, where the end of the terme is certaine, but where the Lease for yeares depends vpon an incertainty, as vpon the death of tenant for life being made by him, or of a husband seised in the right of his wife or the like, there it is otherwise.

Section 69.

¶ Item si vn mese soit lessee a vn home a tener a volunt, p force de quel le lessee enter en le mese, deins quel mese

ALso if a house bee letten to one to hold at will, by force whereof the lessee entreth into the house, & brings his housholde

¶ *Si vn mese soit lesse a vn home a tener a volunt, &c.* The reason of this is euident vpon that which hath beene said before.

¶ *Mese*, or mai-

son,

son, called in legall Latine Messuagium, containeth (as hath beene said) the Buildings, Curtelage, Orchard, and Garden.

Cottage, Cotagium is a little house without land to it. (a) See 31.Eliz. cap.1. and Cottagers in Domesday booke are called Cotterelli: And in antient Records haga signifieth a house. If a man hath a house neere to my house, and he suffereth his house to be so ruinous, as it is like to fall vpon my house, (b) I may haue a Writ de domo reparando, and compell him to repaire his house. But a Præcipe lieth not de domo, but de messuagio.

(a) 31.El. ca.1. in Domseday.

(b) Reg.153.F.N.B.127. 4.E.2.Vouch.244. Six acres of land may be parcel of a house.

¶ *Per reasonable temps.* (c) This reasonable time shall be adiudged by the discretion of the Iustices, before whome the cause dependeth; and so it is of reasonable fines, customes, and seruices, vpon the true state of the case depending before them: for reasonablenesse in these cases belongeth to the knowledge of the Law, and therefore to be decided by the Iustices. (d) Quam longum esse debet non definitur in iure, sed pendet ex discretione Iusticiariorum: And this being said of time, the like may be said of things incertaine, which ought to be reasonable; for nothing that is contrarie to reason, is consonant to Law.

(c) 22.E.4.27.34.H.6.40.

(d) Bract.li.2.ca.52.b.

il porta ses vtensils de meason, & puis le Lessor luy ousta, vncore il auera franke entre egresse & regresse en mesme le mese per reasonable temps, de carrier ses biens & vtensils.

stuffe into the same, and after the Lessour puts him out, yet he shall haue free entrie, egresse and regresse into the said house, by reasonable time to take away his goods and vtinsels.

¶ (e) *Sicome home seisi dun mese en fee simple, ou fee taile, &c.* This is so euident, as it needeth no explanation.

Sicome home seisie dun mese en fee simple, fee taile, ou pur terme de vie, le quel ad certaine biens deins ñ le mese, & fait ses execuꝰ, & dēy, quecunque apres sa mort ad l' mese, vncoꝰ les executors aūont frank entry egresse & regres ô carier hors de mesme le mese les bñs lour testator per reasonable temps.

As if a man seised of a mese in fee simple, fee taile, or for life, hath certaine goods within the sayd house, and makes his Executors, and dieth, whosoeuer after his decease hath the house, his Executours shall haue free entrie egresse and regresse to carrie out of the same house the goods of their testatour by reasonable time.

(e) 2.H.6.15. 21 H.6.30.

Section 70.

¶ Here it appeareth, That if the Feoffee doth enter, he is tenant at will, because hee entreth by the consent of the Feoffor.

¶ *Et deliuer a luy le fait.* Albeit the deed be deliuered vppon the Ground, yet doth it not amount to a liuerie of seisin of the Land; For it hath his naturall effect to make it a Deed. (f) Donationum alia perfecta, alia incepta & non perfecta: Vt

(f) Fleta.li.3 ca.3 & ca.15. 43.E.3.Tit Feoff.& fauts 51. 35.H.8.Fe.f.Br.27. Ass.61. 38.Ass 2.39. Ass.12. 41.E.3.17. li.6.fo.26. Sharpe case.

¶ Item si vn hõe fait vn fait de Feoffement a vn auter de certaine terre, & deliuer a luy le fait, mes nemy liuerie de Seisin, en ceo case, celuy a que le fait est fait, poit enter en le Terre, & tener & occupier a la volunt celuy que fist

Also if a man make a Deed of Feoffement to another, of certaine lands, and deliuereth to him the Deed, but not liuerie of seisin; in this case he to whom the Deed is made, may enter into the Land, and hold and occupie it at the will of him which

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le fait, pur ceo que il est proue per les parols del fait, que il est la volunt que le auter auera la terre, mes celuy que fist le fayt luy poet ouste quaunt luy pleist.

made the Deed, because it is prooued by the words of the Deed, that it is his will that the other should haue the land; but hee which made the Deed may put him out when it pleaseth him.

si donatio lecta fuerit & concessa ac traditio nondum fuerit subsecuta. But if the Deede be deliuered in name of seisin of the Land, or if the Feoffor saith to the Feoffee, Take and enioy this Land according to the Deed, or enter into this Land, and God giue you ioy, these words doe amount to a liuery of seisin.

Section 71.

¶ Item si vn mese soit lesse a tener a volunt, le lessee nest pas tenus a susteiner ou repairer le Meason, sicome Tenant a terme dans est tenus. Mes si le Lessee a volunt fait voluntarie wast, sicome en abatement des measons, ou en couper des arbres, il est dit que le Lessor auera de ceo enūs luy action de Trespasse. Sicome ieo bayle a vn hõe mes barbits a cõpester s̄ t̄r̄, ou mes boefes a aret̄ la terr̄, & il occist mes auers, ieo puisse bien vn act̄ d trēs enūs luy nient obstant l bailement.

ALso if a house be leased to hold at will, the Lessee is not bound to sustain or repaire the house, as Tenant for terme of yeres is tied. But if Tenant at will commit voluntarie wast, as in pulling downe of houses, or in felling of trees, it is said that the Lessor shall haue an action of Trespasse for this, against the Lessee. As if I lend to one my Sheepe, to tathe his land, or my Oxen to plow the land, and he killeth my Cattle, I may well haue an action of Trespas against him, notwithstanding the lending.

¶ *Si vn mese soit lesse a tener a volunt le lessee nest passe tenus, &c.* For the statute of Glouceſter aboue mentioned extends not to a Tenant at will, and therefore for permissiue waſt, the lessor hath no remedie at all.

¶ *Mes si Lessee a volunt fait voluntary wast, &c.* (g) And true it is, That if Tenant at will cutteth downe timber Trees, or voluntarily pul downe and prostrate houses, the Lessour shall haue an action of Trespasse against him, quare vi & armis, for the taking vpon him power to cut timber, or prostrate houses, concerneth so much the freehold and inheritance as it doth amount in Law to a determination of his will, (h) and so hath it beene adiudged.

(g) 21. H. 6. 38. 28. E. 3. 23. 12. H. 4. 3. 32. E. 4. 50.

(h) *Mich. 28. & 29. Eliz. Rot. 318. in Com. Banc. enter Walgrave & Somerset. V. le Comte de Shrewsburies case, li. 5. fo. 13.*

(i) If Tenant at will granteth ouer his estate to another, and the Grantee entreth, he is a Disseisor, and the lessor may haue an Action of Trespasse against the grantee, for albeit the grant was void, yet it amounteth to a determination of his will.

(i) 27. H. 6. 3. 22. E. 4. 5.

¶ *Sicome ieo baile a vn home mes barbits a compester son terre, &c.* And the reason is, (k) that when the Bailife hauing but a bare vse of them, taketh vpon him as an owner, to kill them, he loseth the benefit of the vse of them. Or in these cases hee may haue an action of Trespasse sur le case, for this conuersion, at his election.

(k) V. 11. H. 4. 24. 1. E. 4. 9. b 12. E. 4. 8. 21. E. 4. 19. & 76. 22. E. 4. 5. 3. H. 7. 4. 21. H. 7. 14. *Flet. li. 2. ca. 1.*

¶ *Trespasse.* Transgressio deriuatur a transgrediendo, because it passeth that which is right: Transgressio autem est cum modus non seruatur, nec mensura: debet enim quilibet in suo facto modum habere, & mensuram: Nota, In the lowest and the highest offences there are no accessaries, but all are principals, as in ryots, routs, forcible entries, and other

other transgressions vi & armis, which are the lowest offences; and so in the highest offence which is crimen lesæ majestatis, there be no accessaries: but in felonies there be accessaries both before and after.

Sect. 72.

21.H.7.39.b. 2.E.4.6.b. 7.E.4.27.a. 6.R.2.Auowrie 86.

(l) Bracton lib.4. fol.318. 4.E.3.39. 7.E.3.13. 24.E.3.24. 38.E.3.28. 7.R.2.saueur deff.30. 8.E.4.25. 4 H.6.30. 22 E.4.38. 18.E.4.25. F.N.B.201.D.203. 8.E.3.entre 87. Temps H.8.b.15. tit.tenant a volunt. Pl.com.138. 4.H.7.5.

(m) 13.H.7.10 a. 21.H.6.54. 5.E.4.3. 22.R.2.tit. Discont. 48.E.3.23.pl.com.435. 19.E.3.bre. 468. 15.E.4. Discont.30. 6.E.3.56.57. 21.E.4.5. 21.H.7.38. 10.E.4.18. Per Choke & Litt.

(n) Statute de Merlbridge cap.26. Abb.Ass.120.b. F.N.B.196. 11.E.4.10.& 11. Bract.lib.4 fo.252.253.

CIL poet distreyner pur le rent arere ou auer de ceo vn action de debt, &c. **But if he** impound the distresse vpon the ground letten at will, the will is determined Note he may distreine for the Rent, and yet it is no Rent seruice, for no fealty belongeth thereunto, but a Rent distreinable of common right.

CNOta si le lessor sur tiel lease a volunt reserue a luy vn annual rent, il poit distrainer pur le rent arere, ou auer de ceo vn action de debt a son election.

NOte if the lessor vpon a lease at will, reserue to him a yearely rent, he may distreine for the rent behinde, or haue for this an action of debt at his owne election.

There is a great diuersity betweene a tenant at will, and a Tenant at sufferance; for Tenant at will is alwayes by right, and Tenant at sufferance entreth by a lawfull Lease, and holdeth ouer by wrong. A Tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth the possession and wrongfully holdeth ouer. (l) As Tenant pur terme dauter vie, continueth in possession after the decease of Ce' que vie, or tenant for yeares holdeth ouer his tearme; the Lessor cannot haue an action of trespasse before entrie. Now that a writ of entrie ad terminum qui preterijt lyeth against such a Tenant as holdeth ouer, is rather by admission of the demandant, then for any estate of Freehold that is in him, for in iudgement of Law he hath but a bare possession, but against the King there is no tenant at sufferance, but he that holdeth ouer in the cases aboue said is an intruder vpon the King, because there is no laches imputed to the King for not entring (m) If Tenant in taile of a Rent grant the same in fee and dieth, yet the issue in taile may bring a Formedon and admit himselfe out of possession. The like Law is it if a man maketh a Lease at will and dieth, now is the will determined, and if the Lessee continueth in possession he is Tenant at sufferance, and yet the heire by admission may haue an assize of Mordanc' against him. (n) But there is a diuersity betweene particular estates made by the terretenaunt, as aboue is said, and particular estates created by act in Law: as if a gardian after the full age of the heire, continueth in possession, he is no Tenant at sufferance, but an Abator, against whom an Assize of Mordancester doth lye, Et sic de similibus.

CHAP. 9. *Section 73.*

Tenant by Coppie.

CTEnant per copie, &c. Tenens per copiam rot. Eur'. Copie we call in Latyn copiam, though copia in his proper signification signifieth plenty, but we haue made a Latyn word of the French word copie and this is ancient for in the Register fo.51. there is a writ de copia libelli deliberanda, which is grounded vpon the statute of 3.H.4.ca. There is no tenant in the Law, that holdeth

CTEnant y copie de court roll est, deins quel manor il y ad vn custome que ad este vse de temps dont memorie ne court, que certaine tenants deins mesm̃ le manor, ont vse dauer terres & tenements, a tener a

TEnant by copy of Court Roll is, as if a man be seised of a mannor, within which manor there is a custome, which hane beene vsed time out of minde of man, that certaine tenants within the same manor haue vsed to haue lands and te-

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eux & la lour heires en fee ſimple, ou en fee taile, ou a terme de vie, &c. a volunt le Seignior ſolonque le cuſtome de meſme le manor.

nements to hold to them and their heires in fee ſimple, ou fee taile or for terme of life, &c. at the will of the Lord according to the cuſtome of the ſame manor.

by copie but only this kinde of cuſtomary tenant, for no man holdeth by copie of a Charter, or by copie of a fine, or ſuch like, but this tenant holdeth by copie of Court roll.

(a) Bracton calleth Copiholders Villanos Sockmānos, not becauſe they were bond, but becauſe they held by baſe tenure by doing of Villein ſeruices.

(a) *Bracton lib.2. ca.8. fo.26. & lib.4.fo.209. Britton.165. Fleta lib.1.cap.8. & lib.2. cap.6. Item de cuſtuma iii. Oc. am Cap. quid murdrum. F.N.B.fo.12.c.*

And Britton ſaith that ſome that be free of blood doe hold land in Villenage, and Littleton himſelfe in the next chapter calleth them tenants by baſe tenure: and in F.N.B. fo.12.C. Et ceſt terme que eſt ore a ceſt jour appel copitenaunts ou copiholders, ou tenaunts per copie, eſt forſque vn novel noſme trove, car dancient temps ils fuer' appelles tenants in Villenage, ou de baſe tenure, &c. (b) And yet in 1.H.5.11. they be called Coppiholders in 14.H.4.34. tenant per le verge. in 42.E 3.25. Tenant per Roll ſolonque le volunt le ſeignior; and in the ſtatute of 4.E.1. called extenta manerij they are called Cuſtumarij tenentes, and ſo doth Fleta call them; And before him Ockam (who wrote in the raigne of H.2.) ſpeake of them and how and vpon what occaſion they had their beginning.

(b) *1.H.5.11.14.H.4.34. 42.E.3.25. Vid.lib.4 fo.2.Brownes caſe.*

(c) Terra ex ſcripto Saxonice Bockland, fundū veteres aut ex ſcripto qui Bockland.i. booklād, aut ſine ſcripto qui Folkland dicebatur, poſſidebant, que fuit exſcripto poſſeſſio commodiore erat poſſeſſione libera, atque immunis, fundus ſine ſcripto cenſum penſitabant annuū, atque officiorum ſeruitute quadam eſt obligatus, priorem viri plerunque nobiles, atque ingenui, poſteriorem ruſtici ſere & pagani poſſidebant.

(c) *Lamb. verb. terra ex ſcripto.*

¶ *Court.* Curia, Court is a place where Juſtice is iudicially miniſtred and is deriued a cura quia in curijs publicis cūras gerebant. (d) The Court baron muſt be holden on ſome part of that which is within the Mannor, for if it be holden out of the Mannor it is voide, vnleſſe a Lord being ſeiſed of two or three Mannors hath vſually time out of minde kept at one of his Mannors Courts for all the ſaid Mannors, then by cuſtome ſuch Courts are ſufficient in Law, albeit they be not holden within the ſeuerall Mannors. And it is to be vnderſtood that this Court is of two natures, the firſt is by the Common Law, and is called a Court baron, as ſome haue ſaid for that it is the freeholders or freemans Court, (for barons in one ſence ſignifie freemen) and of that Court the freeholders being ſuitors be iudges, and this may be kept from three weekes to three weekes; The ſecond is a cuſtomary Court, and that doth concerne Coppiholders, and therein the Lord or his Steward is the iudge. Now as there can be no Court baron without freeholders, ſo there cannot be this kinde of cuſtomary Court without Coppiholders or Cuſtomary holders. And as there may be a Court baron of Freeholders only without Coppiholders, and then is the ſteward the Regiſter, ſo there may be a cuſtomary Court of Coppiholders only without Freeholders, and then is the Lord or his ſteward the iudge. And when the Court baron is of this double nature, the Court Roll conteineth aſwell matters appertaining to the cuſtomary Court as to the Court baron.

(d) *Vid.4 fo.24. inter Murrell & Smith eodem lib.fo.27. inter Cliſton & Molineux.*

And foraſmuch as the title, or eſtate of the Copiholder is entred into the Roll whereof the ſteward deliuereth him a copie, thereof he is called Copiholder. (e) It is called a Court baron becauſe amongſt the laweſ of King Edw: the Confeſſor it is ſaid: Barones vero qui ſuam habent curiam de ſuis hominibus, &c. taking his name of the Baron who was Lord of the Mannor, or for that properly in the eye of Law it hath relation to the Freeholders, (f) who are Judges of the Court. And in Ancient Charters and Records the Barons of London, and Barons of the Cinque ports doe ſignifie the free men of London and of the Cinque ports.

(e) *Lamb fo.128 & 136. Cambden Brit.f.121.b. Britton fo.274.*

(f) *Mirror cap.1.§.3.*

¶ *Seiſie dun mannor.* Manerium dicitur a manendo ſecundum excellentiam ſedes magna fixa & ſtabilis. Lageman .i. habens ſocam & ſacam ſuper homines ſuos, &c. (g) Et ſciendum eſt quod manerium poterit eſſe per ſe ex pluribus edificijs coadiuuatum ſiue villis & hamletis adjacentibus. Poterit etiam eſſe manerium & per ſe & cum pluribus villis & cum pluribus, Hamletis adjacentibus, quorum nullum dici poterit manerium per ſe ſed villæ ſuæ hamlettæ, poterit etiam eſſe per ſe manerium capitale, & plura continere ſub ſe maneria non capitalia, & plures villas & plures Hamlettas quaſi ſub vno capite aut dominio vno. And afterwards, Manerium autem fieri poterit ex pluribus villis vel vna, plures enim villæ poterunt eſſe in corpore manerij ſicut & vna. And in theſe (h) ancient Authors you ſhall ſee the difference, inter manſionem, villam, & manerium. Concerning the inſtitution of this Court by the Lawes and Ordinances of ancient Kings and eſpecially of King Alfred, it appeareth

Domeſday.

(g) *Bracton lib.4.fol.212. Fleta lib.4.cap.15. & lib.6. cap.49. Britton fol.124.*

(h) *Bract. lib.5 fo.434. Fleta ubi ſupra. Mirror. cap.1.§.3.*

that the first Kings of this Realme had all the Lands of England in Demeane, and les grand Manors & Royalties they reserued to themselues, and of the remnant they, for the defence of the Realme, enfeoffed the Barons of the Realme with such iurisdiction as the Court Baron now hath, and instituted the Freeholders to be Iudges of the Court Baron. And herewith agreed the aforesaid Law of Saint Edward. And it is to be obserued, that in those ancient Lawes vnder the name of Barons were comprised all the Nobilitie.

There may be a customarie Manor granted by Copie of Court Roll, so although the word bee (seisie) which properly betokeneth a Freehold, yet Tenant for yeares, Tenant by statute, Merchant, Staple, Elegit, and Tenant at will, Garden in Chiualrie, &c. who are not properly seised but possessed are Domini pro tempore, not only to make admittance, but to grant voluntarie Copies of ancient Copihold lands which come into their hands. And therefore there is a diuersitie betweene Disseisors, Abators, Intrudors, and others that haue defeasible Tities, for their voluntary grants of ancient Copihold lands, shall not binde the Disseisors or others that right haue. And voluntarie grants by Copie, made by such particular Tenants as is aforesaid, shall bind him that hath the Freehold and Inheritance, because all these be lawfull Lords for the time being, but so is not a Tenant at sufferance, because he is in by wrong as hath beene said, and so (i) was it adiudged P. 29. Eliz. inter Rowse & Arteis lib 4. fol 24. But admittances made by Disseisors, Abators, Intruders, Tenant at sufferance or others that haue defeasible Tities, stand good against them that right haue because it was a lawfull act, and they were compellable to doe them.

(i) *Lib. 4. fol. 24. p. 29. Eliz. inter Rous & Arteis.*

(k) And yet in some speciall case an Estate may be granted by Copie, by one that is not Dominus pro tempore, nor that hath any thing in the manor. As if the Lord of a manor by his will in writing, deuiseth that his Executor shall grant the customary Tenements of the Manor according to the custome of the Manor for the payment of his debts, and dieth, the Executor hauing nothing in the Manor may make grants according to the custome of the Manor.

(k) *Dier. Mich. 7. & 8. Eliz. Manuscript.*

¶ *Deins quel mannor il y ad vn Custome que ad este vse de temps dont memory ne court, &c.* Of this custome here spoken of there bee three supporters. The first is time, and that must be out of memory of man, which is included within this word (custome) so as Copihold cannot begin at this day. (l) The second supporter is that the Tenements be parcell of the Manor or within the Manor, which appeare by these words of Littleton, que certeine tenants deins mesme le mannor, &c. The third supporter is that it hath beene demised and demisible by copie of Court Roll, for it needs not to be demised time out of mind by copie of Court; but if it be demisible it is sufficient. For example: If a Copihold tenement escheat to the Lord, and the Lord keepeth it in his hands by many yeares, during this time it is not demised but demisible, for the Lord hath power to demise it againe.

(l) *Vide lib. 4. fol. 24. inter Murrel & Smith.*

¶ *A volunt le seignior solonque le custome.* So as he is not a bare tenant at will, but a tenant at will according to the custome of the manor, as shalbe spoken more hereafter in this chapter.

¶ *Certaine tenements.* What things may be granted by copie, is necessarie to be knowne: First, a Manor may be granted by copie. Secondly, vnderwoods without the soile may be granted by copie to one and to his heires, and so may the herbage or vesture of land. Thirdly, generally all lands and tenements within the Manor and whatsoeuer concerneth lands or tenements may be granted by copie: as a faire appendant to a Manner may be granted by copy, &c.

Lib. 11. 17. Sir H. Neuils case.

Lib. 4. fol. 30. 31. inter Hoe & Taylor.

¶ *Consuetudines.* This word Consuetudo being deriued a Consueto, properly signifieth a Custome, as here Littleton taketh it: But in legall vnderstanding it signifieth also Tolles, Murage, Pontage, Pauiage, and such like newly granted by the King; and therefore when the King grantes such things, the words be Concessimus &c. in auxillium villæ prædict' pauiand' &c. consuetudines subscriptas, viz. de quolibet sunnagio, &c.

Regist. F.N.B. 270. d. Vet. mag. Cartar. cap Iren. fol. 151. Bract. lib. 3. 117. Fleta. lib. 1. cap. 20.

And it was an Article of the Iustices in Eire to inquire, De nouis consuetudinibus leuatis in regno siue in terra, siue in aqua, & quis eas leuauit & vbi. where consuetudo is taken for Tolles, and such like Taxes or Charges vpon the subiect.

Section 74.

¶ *Et tiel tenant ne puit aliener sa terre, &c.* And this is

¶ Et tiel tenant ne puit alien sa terre per fait, car

And such a tenant may not alien his land by deed, for then

donques le Seignior poit entre come en chose forfeit a luy, mes sil voit alien sa terre a vn auter, il couient solonque ascun custome de surrender les tenemẽts en ascun Court &c. en le maine le Seignior, al vse celuy que auera le state, en tiel forin, ou a tiel effect.

Ad hanc Curiam venit *A.* de *B.* & sursum reddidit in eadem Curia, vnum mesuagium, &c. in manus Domini, ad vsum *C.* de *D.* & hæredum suorum, vel hæredum de corpore suo exeuntiũ, vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cœpit de Domino in eadem Curia, mesuagium prædictũ, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatem domini, secundum consuetudinem manerij, faciendo & reddendo inde redditus, seruitia, & consuetudines inde, prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c.

the Lord may enter as into a thing forfeited vnto him. But if hee will alien his land to another, it behoueth him after the custome to surrender the tenements in Court, &c. into the hands of the Lord to the vse of him that shall haue the Estate in this forme or to this effect.

A. of *B.* commeth vnto this Court, and surrẽdreth in the same Court a Mease, &c. into the hands of the Lord, to the vse of *C.* of *D.* and his heires, or the heires issuing of his bodie, or for terme of life, &c. And vpon that, commeth the aforesaid *C.* of *D.* and taketh of the Lord in the same Court, the foresaid Mease &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his bodie, or to him for terme of life, at the Lords will, after the custome of the Manor to do and yeeld therefore the Rents, Seruices, and Customes thereof before due & accustomed, &c. and giueth the Lord for a fine, &c. and maketh vnto the Lord his fealtie, &c.

time in Case of alienation, but when a man hath but a right to a Copihold, he may release it by deed or by Copie, to one that is admitted Tenant de facto.

Lib. intrat. 131. Lib. 4. fol. 25. b. inter Rite & Quainton.

¶ *Alien per fait.* **Here it appeareth by Littleton that there must be an alienation: for the making of the Deed alone, vnlesse somewhat passe thereby is no forfeiture: as if he make a Charter of feoffement, or a Deed of demise for life, and make no liuery, this is no forfeiture, because nothing passeth, and therefore no alienation, but otherwise it is of a lease for yeares.**

¶ *Forfeit a luy.* **This Adiective in Latine is forisfactus, the Verbe is forisfacere, and the Nowne forisfactura, they are all derined of foris, (that is) extra and facere, quasi diceret extra legem seu consuetudinem facere to do a thing against or without Law or Custome, and that legally is called a forfeiture.** Littleton **vseth this word but once in all his book. What shall be said (k) forfeitures of Copiholds you may read at large in my Reports.**

(k) *Lib. 4. inter les Copihold cases 21. 23. 25. 27. 28. Lib. 8. 92. 99. 100. Lib. 9. 75. 107. Lib. 10. 131.*

¶ *En ascun Court.* **(l) This is the generall custome of the Realme that euerie Copiholder may surrender in Court and need not to alleadge any custome therefore. So if out of Court hee surrender to the Lord himselfe, he need not alleadge in pleading any custome, but if he surrender out of Court into the hands of the Lord by the hands of two or three, &c. Copiholders, or by the hands of the bayliffe or Reeue, &c. or out of Court by the hand of any other, these customes are particular, and therefore he must plead them.**

(l) *Bract. lib. 2. cap. 8. & lib. 4 49. 15. H. 4. 34. 1. H. 5. 11.*

(m) Bracton lib. 4. fol. 209. **speaking of these kind of customary Tenants, saith,** Dare autem non possunt tenemẽta sua, nec ex causa donationis ad alios transferre non magis quam villani puri, & vnde si transferre debeant restituunt ea

(m) *Bract. lib. 4. fol. 209. & lib. 2. cap. 8. nu. 14. H. 4. 34.*

ea Domino vel Baliuo & ipsi ea tradant alijs in villenagium tenenda, but although it be incident to the estate of a Copihold, to passe as our Author saith by surrenders, (b) Yet so forcible is custome that by it a Freehold and Inheritance, may also passe by surrender (without the leaue of the Lord) in his Court and deliuered ouer by the Baily to the fesee according to the forme of the Deed, to be inrolled in the Court or the like.

(b) *Coram rege Mich. 31. E. 3 Randolph Huntingfelds case. 3. E. 3. Corona 310. 11. H. 4. 83. per Thorning.*

¶ *Ad hanc Curiam venit* A. *de* B. *& sursum reddidit, &c.* Here Littleton putteth an example of a surrender in Court, and in this example three (c) things are to be obserued.

(c) *Vide lib. 4. inter les cases de Copiholds.*

First, That the surrender to the Lord be generall without expressing of any Estate, for that he is but an instrument to admit Cesty a que vse, for no more passeth to the Lord, but to serue the limitation of the vse, and Ce' que vse, when her is admitted, shall bee in by him that made the surrender, and not by the Lord.

Secondly, if the limitation of the vse be generall, then Ce' que vse taketh but an estate for life, And therefore here Littleton expresseth vpon the declaration of the vse the limitation of the Estate, viz. in fee simple, fee taile, &c.

Thirdly, The Lord cannot grant a larger Estate then is expressed in the limitation of the vse. Littleton here putteth his case of one. If two toyntenants be of Copihold lands in fee, and the one out of Court according to the custome surrender his part to the Lords hands, to the vse of his last will, and by his will deuiseth his part to a stranger in fee, and dieth, and at the next Court the surrender is presented; by the surrender and presentment the toynture was seuered, and the deuisee ought to be admitted to the moitie of the lands, for now by relation, the state of the land was bound by the surrender.

(d) *Mich. 2. & 3. Ph. & M. in Com. Banco, by the whole Court in Comitabus case of Pickenham in Norfolk.*

¶ *In manus Domini. Dominus manerij.* The Lord of a Manor is described (e) by Fleta as he ought to be in these words. In omnibus autē & supra omnia de. et quēlibet Dominū verbis esse veracem, & in operibus fidelem, Deū & Iustitiam amantem, fraudem & peccatum odientem, voluntariosque, maleuolos, & iniurioſos contemnentem, & apud proximos pietatem vultumque motibilem & plenum, ipsius enim interest potius consilio quam viribus vti, proprioue arbitrio: non cuiuslibet voluntarij inuenis menestralli, vel adulatoris sed iurisperitorum virorum fidelium & honestorum, & in pluribus expertorum consilio debet fauere. Qui bene sibi vult disponere & familiæ suæ, scire veram executionem terrarum suarum necessarium erit, vt perinde sciat quantitatem suarum facultatum & finem annuarum expensarum. And the residue is fit for euery Lord of a Manor to know and follow which were too long here to be recited, only his conclusion hauing spoken of the Lords reuenue and expenses I will adde, Quæ omnia distincte scribantur in membranis, vt perinde sagacius vitam suam disponat & facilius conuincat mendacia compotariorum.

(e) *Fleta. lib. 2. ca. 65. & 71.*

(f) If the Lord of the Manor for the time being be Lesse for life or for yeares, garden, or any that hath any particular interest, or tenant at will of a Manor (all which are accounted in law Domini pro tempore) doe take a surrender into his hands, and before admittance the Lesse for life dieth, or the yeares interest or custodie doe end or determine, or the will is determined, though the Lord commeth in aboue the Lease for life or for yeares, the custodie or other particular interest or tenancie at will, yet shall he be compelled to make admittance according to the surrender, and so was it holden in 17. Eliz. in the Earle of Arundels Case, which I my selfe heard.

(f) *See more of this lib. 4. the cases of Copiholds. Trin. 1. Ia. Rot. 854. inter Shapland & Ridler in repl. in Com. Banco, the case of the Gardein Seruage adiudged.*

¶ *Et dat Domino de fine.* For the signification of this word (finis) vide Sect. 174. 183. 194. 441.

Of fines due to the Lord by the Copiholder, some be by the change or alteration of the Lord, and some by the change or alteration of the tenant, the change of the Lord ought to be by Act of God, otherwise no fine can be due, but by the change of the tenant either by the Act of God, or by the act of the partie a fine may be due: for if the Lord doe alledge a custome within his Manor to haue a fine of euery of his Copiholders of the said Manor at the alteration or change of the Lord of the Manor, be it by alienation, demise, death, or otherwise, This is a custome against the Law, as to the alteration or change of the Lord by the act of the partie, for by that meanes the Copiholders may be oppressed by multitude of fines, by the act of the Lord. But when the change groweth by the act of God, there the custome is good as by the death of the Lord. And this, vpon a Case in the Chancerie (g) referred to Sir Iohn Popham Chiefe Iustice, and vpon conference with Anderson, Periam, Walmesley, and all the Iudges of Sergeants Inne in Fleetstreet, was resolued, and so certified into the Chancerie. But vpon the change or alteration of the Tenant, a fine is due vnto the Lord.

(g) *T. 29. Eliz. betweene the Copiholders of the Manor of Gultons, in the Countie of Northumberland and Armestrong, Lord of the Manor in Chancerie.*

Of fines taken of Copiholders some be certaine by custome, and some bee incertaine but that fine though it be incertus, yet must it bee rationabilis. And that reasonablenesse shall bee discussed by the Iustices vpon the true circumstances of the Case appearing vnto them, and if the Court where the cause dependeth, adiudgeth the fine exacted vnreasonable, then is not the

Copi-

Copiholder compellable to pay it. And so was it adiudged (h) for all excessiuenesse is abhorred in Law. See more concerning fines of Copiholders in my Reports (i) which are so plainly there set downe, as they need not be rehersed here.

(h) Pasch.1.Iac.in com. banco ret.1845.inter Stallon & Brady.
(i) Lib.4.the cases of Copiholds.

Sect.75.

CEt tiels tenants sont appelles Tenants per copie de court Rolle, pur ceo que ils nont auter euidence concernãt lour tenemẽts, forsque les Copies des Rolles ỏ Court.

And these tenants are called tenants by copie of court Rolle, because they haue no other euidence concerning their tenements but only the Copies of Court Rolles.

¶ *Ils nont auter euidence.* This is to be vnderstood of euidences of alienation, for a release of a right by Deed a Copiholder (that commeth in by way of admittance) may haue, and that is sufficient to extinguish the right of the Copihold which he that maketh the release had.

Section 76.

CEt tiels tenãts ne emplederõt, ne serront empledes de lour tenements p briefe le Roy. Mes ils voilent empleder auters pur lour tenements, ils aueront vn plaint fait en le Court le Seignior en tiel forme, ou a tiel effect: A.de B. queritur versus C. de D. de placito terræ, videlicet, de vno mesuagio, quadraginta acris terr',quatuor acris prati,&c. cum pertin. & facit protestationem sequi querelam istam in natura breuis domini Regis assisæ mortis anteccssoris ad communẽ legẽ, vel breuis domini regis assisæ Nouæ disseisinæ ad cõmunem legem, aut in natura breuis de for-

And such tenants shall neither implead nor be impleaded for their tenements by the Kings writ, but if they will implead others for their tenements, they shall haue a plaint entred in the Lords Court in this forme, or to this effect. A.of B. complaines against C.of D. of a plea of land,viz.of one mesuage, forty acres of land, foure acres of meadow,&c.with the appurtenances, and makes protestation to follow this complaint in the nature of the Kings writ of assise of Mordancester at the Common Law, or of an assise of nouel disseisin, or formedon in the discender at the

¶ *Tiels tenants ne emplederont, ne serront empledes, &c.* This is euident and needes no explanation.

4.H.4.34.adiudged in Parliament.

¶ *Mes ils violent empleder auters, ils aueront,&c.* Put the case that the Demandant in a pleint in nature of a reall action recouereth the land erroniously, what remedy for the partis grieued? For he cannot haue the Kings writ of false iudgement in respect of the baseneese of the estate and tenure, being in the eye of the law but a Tenant at will and the freehold being in another, he shall haue a petition to the Lord in the nature of a writ of false iudgement, and therein assigns errors and haue remedie according to Law.

14.H.4.34. 1.H.5.11. Vet.N.B.18. 13.R.2.tit.Faux iudgment. 7.E.4.19 21.E.4.80.

¶ *De forma donationis in discender ad communem legem.* By the opinion of Littleton as there may be an estate taile by custome with the co-operation of the Statute of W.2.cap.1. so may he haue a Formedon in discender, but as the Statute without a custome extendeth not to Copiholds, so a custome

Lib.3 fo.8.9. in Haydons case. Lib.4.fo.22.23. 15.H.8.Br.tit.taile.

ſtome without the ſtatute cannot create an Eſtate tatle. Now it is not a ſufficient proofe that lands haue beene granted in tatle, for albeit lands haue anciently and vſually beene granted by Copie to many men and to the heires of their bodies, that

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(y) P. 29. Eliz. inter Hill & Vpcheir. Cuſtome deins le manor de Ouerhall in Eſſex. 21. Eliz. Dier 366. 23 Eliz. Dier 373. (z) 10. E. 2. formedon. 55. 21. E. 3. 47. Pl. Com. 240. 4. E. 2. formedon 50.

may be a Fee ſimple conditionall as it was at the Common Law. But if a remainder haue been limited ouer ſuch Eſtates and enioyed, or if the iſſues in tatle haue auoyded the alienation of the anceſtor, or if they haue recouered the ſame in writs of Formedon in the diſcender, theſe and ſuch like be proofes of an Eſtate tatle. (y) But if by cuſtome, Copiehold may be intailed, the ſame by like cuſtome, by ſurrender may be cut off, and ſo hath it beene adiudged, (z) ſome haue holden that there was a Formedon, in the diſcender at the Common Law.

Sect. 77.

13. E. 3. tit. praſcript. 20. 13. R. 2. ſeruit iudgement 7. 32. H. 6. tit. Subpena 2. 7. E. 4. 19.

¶ *Car (il eſt dit) que ſi le Seignior, &c.* And here Littleton ſaith truly that it is ſaid ſo, for ſo it is ſaid in 13. E. 3. 13. R. 2. 32. H. 6. & 7. E. 4. 19.

But hee ſetteth not downe his owne opinion, but rather to the contrarie, as hereafter in this chapter appeareth. But now magiſtra rerum Experientia, hath made this cleere and without queſtion, that the Lord cannot at his pleaſure put out the lawfull Coppiholder without ſome cauſe of forfeiture, and if he do the Coppiholder, may haue an action of treſpaſſe againſt him, for albeit hee is tenens ad voluntatem Domini, yet it is ſecundum conſuetudinem Manerij.

Vide Sect. 81. 82. 84. 132.

(b) Vid. 42. E. 3. 25. Britt. fol. 165.

(b) And Britton ſpeaking of theſe kinde of Tenants ſaith thus, & ceux ſont priuiledges en tiel maner que nul de les doit ouſter de

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¶ Mes Brian **Chiefe Iuſtice dit, que ſon opinion ad touts foits eſte, & vnquez ſer̃, ſi tiel teñt per le cuſtome payant ſes ſeruices ſoit eiect per le Seignior, que il auera action de trꝪs vers luy,** H. 21. Ed. 4. **Et iſſint fuit lopinion de** Danby **chiefe Iuſtice, M. 7. Ed. 4.**

And although that ſome ſuch Tenants haue an Inheritance according to the cuſtome of the Manor, yet they haue but an Eſtate but at the will of the Lord according to the courſe of the cõmon law. For it is ſaid, that if the Lord doe ouſt them, they haue no other remedy, but to ſue to their lords by petitiõ, for if they ſhold haue any other remedy, they ſhould not be ſaid to be tenãts at wil of the lord according to the cuſtome of the Manor. But the Lord cãnot breake the cuſtome which is reaſonable in theſe caſes.

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Car il dit que le tenãt per le custome est ciert bien enheriter de auer son terre solonq̃ le custome, come cestuy que ad franktenement al common ley.

For hee saith that tenant by the custome is as well inheritour to haue his land according to the custome as he which hath a freehold at the Common Law.

tiels tenements, tant come ilz font les seruices que a lour tenements appendent, ne nul ne poet lour seruices acrestre ne change a faire autres seruices ou pluis. And herewith agreeth Sir Robert Danby chiefe Justice of the Court of Common pleas M. 7. E. 4. 19. and Sir Thomas Brian his successor M. 21. E. 4. 80. viz. that the Copiholder doing his customes and seruices, if hee be put out by his Lord, hee shall haue an action of trespasse against him.

Chap. 10. Sect. 78.

Tenant per le Verge.

Tenãts p le Verge, sont en tiel nature come Tenants per le copy de Court Roll. Mes la cause pur que ils sont appelles tenãts per la Verge, est p ceo que quant ils voilẽt surrender lour tenemts en le maine lour seignior al vse dun autre, ils aueront vn petite verge (per le custome) en lour maine, le quel ils bailera al Seneschall, ou al bailife solonq̃ le custome & vse del manor, & celuy q̃ auera la terre, prendra m̃ la t̃re en le court, & son prisel serra enter en le roll, & le Seneschal, ou le bailife, solonq̃ le custome deliuera a ce-

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Tenants per le Verge. This Tenant per le Verge is a meere Copiholder, and taketh his name of the Ceremony of the Verge. Tenure in Villenage or by base tenure is thus described by Britton, (a) Villenage est, teñ de demeynes de chescun Seignior baille a tener a son volunt p Villeines seruices de enprover al opes le Seignior, & liuere per verge & nient per title de estrit, ne per succession de heritage dont gards de mariages ne auters seruices reals come homage & reliefes ne ponent des amrones de demeynes ne de villenage ests demand. 14. H. 4. 33.

(a) *Britton fol. 165. a. F. N. B. fol. 12. Liberatio per Virgam.*

A le seneschall. (which wee call a steward) Seneschallus is derived of sein a house or place, and Schalc an officer or gouernour, some say that sen is an ancient word for Justice, so as Seneschall should signifie officiarius Iustitiæ, and some say that steward is derived of Stewe (that is) a place, and Ward, that signifieth a keeper, warden or Gouernour, And others that it is derived of Stede, that signifieth a place also and Ward as it were the keeper or gouernour of that place; but it is a word of

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ma donationis in diſcendere ad communem legem, **ou en nature dastun auter brieue, &c.** Plegij de proſequendo, F.G. &c Common Lawe, or in the nature of any other Writte, &c. Pledges to proſecute F.G. &c.

Sect. 77.

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And although that ſome ſuch Tenants haue an Inheritance according to the cuſtome of the Manor, yet they haue but an Eſtate but at the will of the Lord according to the courſe of the cõmon law. For it is ſaid, that if the Lord doe ouſt them, they haue no other remedy, but to ſue to their lords by petitiõ, for if they ſhold haue any other remedy, they ſhould not be ſaid to be tenãts at wil of the lord according to the cuſtome of the Manor. But the Lord cãnot breake the cuſtome which is reaſonable in theſe caſes.

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Tenants per le Verge. This Te= nant per le Verge is a meere Copyholder, and taketh his name of the Ceremony of the Verge. Tenure in Villenage or by base tenure is thus described by Britton, (a) Villenage est, ten̄ de demeynes de ches= cun Seignior baille a tener a son volunt p Villeines serui= ces de enprover al opes le Seig= nior, & liuere per verge & nient per title de estrit, ne per succession de heritage dont gards de mariages ne auters seruices reals come ho= mage & reliefes ne ponent des amrones de demeynes ne de villenage ests demand. 14.H.4.33.

(a) *Britton fol.*165.a. *F.N.B. fol.*12. *Libertas per Virgam.*

A le seneschall. (which wee call a steward) Seneschallus is derined of sein a house or place, and Schalc an officer or gouernour, some say that sen is an anci= ent word for Iustice, so as Seneschall should signifie offi= ciarius Iustitiæ, and some say that steward is derined of Stewa (that is) a place, and Ward, that signifieth a Kee= per, warden or Gouernour, And others that it is derined of Stede, that signifieth a place also and Ward as it were the Keeper or gouernour of that place; but it is a word of

Vid. Sect. 92. & 379. Fleta lib. 2. cap. 66. Vid. Statut. de extent. manr. 14. E. 1.

of many significations. In this place it signifieth an officer of Justice viz. a keeper of Courts, &c. Fleta describeth the office and duty of this officer at large most excellently; Prouideat sibi dominus de seneschallo circumspecto & fideli, viro prouido & discreto & gratioso, humili, pudico, pacifico & modesto, qui in legibus consuetudinibusque prouinciæ & officio seneschalciæ se cognoscat & jura domini sui in omnibus teneri affectet, quique subballivos domini in suis erroribus & ambiguis sciat instruere & docere, quique egenis parcere, & qui nec prece vel pretio velit à tramite justiciæ deviare, & peruerse judicare, cuius officium est curias tenere maneriorum & de subtractionibus consuetudinum, seruiciorum, reddituum, sectarum ad cur', mercata, molendina domini & ad visus francpledg: aliarumque libertatum domino pertinentium inquirat, &c. The residue pertaining to his office is worth your reading at large. Euery steward of Courts is either by Deed or without Deed, for a man may be retayned a steward to keepe his Court baron and Leete also belonging to the Mannor without Deed, and that reteyner shall continue vntill hee be discharged. The Lord of a Mannor may make admittances out of Court and out of the Mannor also, as at large appeareth in my reports.

luy que prist la terre, mesme l'verge, ou vn auter verge en noſme del seisin, & pur cel cause ils sont appelles tenants per le verge, mes ils nont auter euidence, sinon pur copy de Court roll.

shall deliuer to him that taketh the land the same rod, or another rod in the name of seisin, and for this cause they are called tenants by the verge but they haue no other euidence but by copy of Court roll.

Vid. lib. 4. Cases de Copiholds, fo. 26. 27. 30.

Section 79.

CA *Le bailie.* This word bailie as some say commeth of the French word Baylife, in Latyn balivus but in truth Bailie is an old Saxon word and signifieth a safe keeper or protector, and baile or ballium is safe keeping or protection, And thereupon we say when a man vpon suretie is deliuered out of prison traditur in ballium he is deliuered into baile, that is, into their safe keeping or protection from prison; and the sherife that hath Custodiam comitatus, is called balivus and the Countie baliva sua.

Vid. Lamb. exposition of Saxon words.

C *Reue* is deriued of the Saxon word geresa or gereve, and by contraction or rather corruption Gereue or Reue and is in Latyn præfectus or præpositus. It signifies as much as appruator a disposor or director, as woodreeue, sheepe reeue, shire reeue, &c. whereof more shalbe said hereafter. Vide Fleta lib. 2. cap. 67. where hee treateth of the office of the Bailife, and cap. 69. de officio præpositi of

Fleta lib. 2. ca. 67.

CE Tauxy en diuers seignories & manors, il y ad tiel custome, si tiel tenant que tient per custome voloit alener ses terres ou tenements, il poit surrender ses tenemẽts a le Baily, ou a le Reeue, ou a deux probes homes del seignior, al vse cestuy que auera le terre, dauer en fee simple, fee taile, ou pur terme de vie, &c. Et tout ceo ils presenterront al procheine Court, & donqs celuy q̃ auera la tre p Copy de Court Rol, auera mesme la tre solonqs lentẽt del surrender.

AND also in diuers Lordships and mannors there is this custome, viz. if such a tenant which holdeth by custome will alien his lands or tenements hee may surrender his tenemẽts to the Bailife or to the Reeue or to two honest men of the same Lordship to the vse of him which shall haue the land to haue in fee simple, fee taile, or for terme of life, &c. and they shall present all this at the next court, & thẽ he which shall haue the land by copy of Court Roll, shall haue the same according to the intent of the surrender.

the office of the reeue, and what belongeth of dutie and right to either of them, which words are too long here to be inserted, only this I will take out of him, balivus autem cuiuscunque manerij esse debet in verbo verax, & in opere diligens & fidelis ac pro discreto appruatore plegiatu- & electus qui de moribus & legibus pro tanto officio sufficient' se cognscat, & quod sit ita jus istus quod obvindictam seu cupiditatem non quærat versus tenentes domini nec alios, &c. Præpositus autem tanquam appruator & cultor optimus, &c. domino vel eius seneschallo palam debet presentari cui injungatur officium illud indilate, non ergo sit puer aut somnolentus sed efficaciter & continue comodum domini adipisci nitatur & exarare, &c. The residue concerning both the Offices being worth your reading.

¶ *A le bailie ou a le Reeue.* Littleton intendeth into the hands of the Lord by the hands of the Bailiffe or the Reeue.

¶ *Ou al deux probes homes del seignorie.* The custome doth guide these surrenders out of Court, and the custome must be pursued.

¶ *Et tout ceo ils presenteront al procheine court, &c.* By the surrender out of Court the Copihold estate passeth to the Lord vnder a secret condition that it be presented at the next Court according to the custome of the mannor. And therefore if after such a surrender, and before the next Court he that made the surrender dieth, yet the surrender standeth good, and if it be presented at the next Court Ce' a que vse shalbe admitted thereunto; but if it be not presented at the next Court according to the custome, then the surrender becommeth voide, and so was it clearely holden Pasch. 14 Eliz. in the court of Common pleas which I my selfe heard.

Vid. lib. 4. fol. 25. Kit & Quaintins case.

Sect. 80.

¶ Et tiels est accauoire, que en diuers seignories, & diuers manors, sont plusors & diuers customes en tiels cases, quant a prender tenements, & quant a pleder, & quant as autres choses & customes a faire, & tout ceo que nest pas encounter reason, poit bien estre admitte & allow.

AND so it is to bee vnderstood, that in diuers Lordships, and in diuers manners, therebe many and diuers customes, in such cases as to take tenements, and as to plead, and as to other things and customes to bee done, and whatsoeuer is not against reason, may well bee admitted and allowed.

¶ *Sont plusors & diuers customes.* This was cautiously set downe, for in respect of the variette of the customes in most Mannors, it is not possible to set downe any certaintie, only this incident inseparable euery custome must haue, viz. that it be consonant to reason, for how long soeuer it hath continued, if it be against reason, it is of no force in Law.

¶ *Enconter reason.* This is not to be vnderstood of euery vnlearned mans reason, but of artificiall and legal reason warranted by authority of Law: Lex est summa ratio.

Section 81.

¶ *Ils sont appelles tenants per base tenure.* Of this sufficient hath beene spoken before.

¶ Et tiels tenants q̄ teignont solonqꝫ le custome dun seignioꝛie, ou dun manoꝛ, coment que ils ont estate denheritance solonqꝫ le custome del Seignioꝛy ou mañ, vnc̄ pur ceo q̄ ils nōt asc̄

AND these tenants which hold according to the custome of a Lordship or Mannor, albeit they haue an estate of inheritance according to the custome of the Lordship or Mannor, yet because

frankstenement per le cours del common ley, ils sont appelles Tenants p base tenure.

they haue no freehold by the course of the common law, they are called tenants by base tenure.

Sect. 82.

¶ *Tenant a volunt solonque le custome puit auer estate denheritance, &c.* Here note that Littleton alloweth that by the customs of the Manor, the Copiholder hath an Inheritance, and consequently the Lord cannot put him out without cause.

¶ *Mes si home, &c. voile Lesser Terres ou tenements a vn auter a auer & tener a luy & ses heires a volunt le lessor, ceux parols (a les heires de le lessee) sont voides, car en cest case si le lessee deuie, & son heire enter le lessor auera action de trespasse enuers luy, &c.* By which it is proued that by the death of the lessee, the Lease is absolutely determined, which is proued by this that if the heire enter the Lessor shall haue an action of trespasse, quare vi & armis, before any entrie made by the Lessor.

10.E.4.18.22.E.4.13. 2.R.2.*barre* 237.11.H.7.22. 21.H.7.12.

¶ Et diuers diuersities p sont perenter tenant a volunt, que est eins per lease son lessor per le course del common ley, & tenant solonq; le custome del manor en le forme auantdit. Car t a volūt solonq; le custom puit auer estate denheritance (cōe est auantdit.) al volūt le seignior solōq; le custome & vsage del manor. Mes si home ad terres ou Tenements, queux ne sont deins tiel manor ou Seigniorie, ou tiel custome ad este vse en le forme auantdit, & voile lesser tiels terres ou tenemnts a vn auter, a auer & tener a luy & a ses heires a le volunt le lessor, ceux parolx (a les heires de le lessee) sont voids, Car en cest case si le lessee deuie & son heire enter le lessor auera bon action de trespas enuers luy, mes nemy illint enuers lheire le terre per le custome en ascun cas, &c. pur ceo que le custome de le manor en ascun cas luy puit aide de barrer son seignior en action de trespasse, &c.

And there are diuers diuersities betweene tenant at wil which is in by lease of his lessor by the course of the Common Law, and tenant according to the custome of the Manor in forme aforesaid. For tenant at will according to the custome may haue an estate of inheritance (as is aforesaid) at the will of the Lord, according to the custome and vsage of the Manor. But if a man hath lands or tenements which bee not within such a Manor or Lordship, where such a custome hath beene vsed in forme aforesaid, and will let such lands or tenements to another, to haue and to hold to him and to his heires at the wil of the lessor, these words (to the heires of the Lessee) are void. For in this case if the lessee dieth, and his heire enter, the Lessor shal haue a good Action of trespasse against him, but not so against the heire of tenant by the custome in any case, &c. for that the custome of the Manor in some case may aide him to barre his Lord in an action of Trespasse, &c.

¶ Par

¶ *Pur ceo que le custome de le Manor en ascun case luy puit aider de barrer son seignior en action de trespasse, &c.* Hereby it appeareth that by the opinion of Littleton, the Lord against the custome of the Manor cannot suit the Copiholder.

Section 83.

¶ Item lun tenãt per le custome ẽ ascuns lieux doit repaier & susteiner ses measons, & lauter tenant a volunt nemy.

ALso the one tenant by the custome in some places ought to repaire and vphold his houses, and the other Tenant at will ought not.

¶ *Per le Custome.* For what a Copiholder may or ought to doe, or not doe, the custome of the Manor (a) must direct it, for Consuetudo Manerij est obseruanda. (b) But if their be no customs to the contrary, wast either permissiue or voluntarie of a Copiholder, is a forfeiture of his Copihold.

(a) *Bracton. lib. 2. fol. 76.*

(b) *Vide lib. 4. fol. 21. 22. &c. in cases de Copiholds.*

Sect. 84.

¶ Item lun tenant per le custome ferra fealtie, & lauter nemy. Et pluisors auters diuersities y sont perenter eux.

ALso the one tenãt by the custome shall do fealtie and the other not, and many other diuersities there be betweene them.

¶ *Vn tenant per le custome ferra fealtie, & lauter nemy.* And the doing of fealtie by a Copiholder, proueth that a Copiholder so long as he obserues the custome of the Manor & payeth his seruices

Vide Sect. 132.

hath a fixed Estate. For Tenant at will that may bee put out at pleasure shall not doe fealtie. For to what end should a man sweare to bee faithfull and true to his Lord, and should beare faith to him which he claymeth to hold of him, and that lawfully hee shall doe his customes and seruices, &c. when hee hath no certaine estate, but may bee put out at the pleasure of the Lessor, or hee himselfe may determine it at his pleasure, of these kind of customarie Tenants, and of many things concerning them, you may read more in the fourth Booke of my Reports, fol. 21. 22. 23. &c.

Lib. 4. fol. 21. 22. 23. &c.

Thus much as I haue here set downe, may suffice, for the vnderstanding of such Cases and Opinions as Littleton hath expressed.

Finis Libris primi.

THE SECOND BOOKE of the first part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Homage.* *Sect.* 85.

THomage est l' pluis honorable seruice, & pluis humble seruice de reuerence, q̃ franktenant puit faire a son Seignior. Car quãt le tenant serra homage a son Seignior, il serra discinct & son test discouer, & son Seignior seera, & le tenant genulera deuant luy sur ambideux genues, & tiendra ses maines extendes, & ioyntes ensemble enter les maines l' Seignior, & illint dirra: Jeo

HOmage is the most honorable seruice & most humble seruice of reuerence that a Franktenant may doe to his Lord: For when the Tenant shall make Homage to his Lord, hee shall be vngirt, and his head vncouered, and his Lord shall sit, and the Tenant shal kneele before him on both his knees, and hold his hands ioyntly together betweene the hands of his Lord, and shall say thus: I become your man

OUr Author hauing taught vs in his former bookes the seuerall distinct estates of lands and tenements as most necessary to be knowne, for the vnderstanding of these two other bookes doth in this second booke treat of the tenures and seruices, whereby the said lands and tenements beene holden, which he deuideth into twelue parts, viz. Homage, Fealtie, Escuage, Knight seruice, Socage, Frankalmoigne, homage auncestrel, grand Serieantie, petit Seriantie, tenure in Burgage, in Villenage, and into Rents, wherein his method is most excellent, for hee beginneth with homage, because it is the most humble seruice of reuerence expelling the dutie of the tenant to his Lord, and the affectionate loue and protection of the Lord towards his tenant as hereafter shall appeare. Secondly, Fealty &

sacred seruice, expressing by oath his fidelitie to his Lord.

Thirdly, Escuage, which is Seruitium scuti, the seruice of the Shield.

Fourthly, Knights Seruice, for the defence of the Realme against outward hostilitie and inuasions, which the better might be effected, if such dutie, fidelitie, & loue were betweene Lords and tenants, as ought to be, and as the law expecteth.

Fiftly, Socage, the seruice of the Plough, aptly placed next Knights seruice, for that the Ploughman maketh the best souldier, as shall appeare in his proper place.

deueigne voſtre hõe de ceſtiour en auant, de vie, & de member, & de terreñ honor, & a uous ſerra foiall & loiall, & foy a vous porṫa õs teñts q̃ ieo claime de teñ de vous, ſalue la foy que ieo doy a nr̃e Sñr̃ le Roy, & donq̃s le ſñr iſſint ſeyant, luy baſera.

from this day forward of life and limme, and of earthly worship, & vnto you shall be true and faithful, and beare you faith for the Tenements that I claime to hold of you, (sauing the Faith that I owe vnto our Soueraigne Lord the King.) And then the Lord so sitting shall kisse him.

Sixtly, Frankalmoigne, Seruice due to Almightie God, placed towards the middest for two causes; First, for that the middest is the most worthie and most honourable place; Andsecondly, because the first fiue preceding Tenures and Seruices, and the other sixe subsequent, must all become prosperous and vsefull, by reason of Gods true Religion and seruice, for Nunquam prospere succedunt res humanæ, vbi negliguntur diuinæ: Wherein I would haue our student follow the aduice giuen in these antient Verses, for the good spending of the day.

Sex horas somno, totidem des Legibus æquis.
Quatuor orabis, des Epulisque duas.
Quod superest vltro sacris largire camœnis.

Seuenthly, Homage auncestrel, Antient Fomlies enioying with their bloud the antient inheritance of their forefathers, as a great blessing of the Almightie.

8, & 9. Serjeantie grand & petit, due to the King onely, to whom the highest and most eminent honour, ligeance, and reuerence of all kind is due; which hath two notable effects: First, Imperij Maiestas est tutelæ salus, according to the old rule. And secondly, it is an assured meanes of long continuance of houses and families in prosperous estate, whereof our Author speaketh in the Chapter before.

10 Then followeth the Tenure of Burgage, of antient Burghes and Cities, &c. which are to be supported for the honour of the King, and for the maintenance of trade and traffique, the life of all Common wealths, especially of Islands.

11 Villenage, for the performance of seruice, yet necessarie seruice for the cleansing of Cities, Boroughs, Mannors, &c. and for the better manuring of arrable grounds, and increase of Husbandrie.

12 And lastly, Tenure by Rents, which are called Viui redditus, because the Lords and owners thereof doe liue by them, which they shall enioy the better, if trade and traffique be maintained, and our native commodities, which are rich and necessarie, holden vp and saleable at a reasonable value. And now vnderstanding his method, let vs peruse our Authors words.

And as our Author began his first Booke with Fee simple, which is the most principall and worthiest estate, so he beginneth his second Booke with Homage, which is the most honourable and humble seruice.

(a) *Glanu. li.9.ca.1. Bract. fo.78 80. Brit. fo.170 172, 173. Flet. li.3.c.16. Mir.c.3. de Homage, & li.5.§.1.*

Homage is deriued of (a) Homo, **and it is called** Homage, **because** when he doth this seruice, he saith, Ieo deueigne voſtre home: **And in English Homage is called Manhood, so as the manhood of his Tenant, and the homage of his Tenant is all one.** Mutua quidem debet esse Dominij & Homagij fidelitatis connexio ita quod quantum homo debet domino ex homagio, tantum illi debet Dominus ex Dominio præter solam reuerentiam.

(b) *Lib. Rub. ca.55.*

¶ *Foial & Loyal.* **These words are of great extent, for they extend to the obseruation of the Lords Councell in whatsoeuer is honest and profitable,** (b) Omnis homo debet fidem Domino suo de vita & membris suis, & terreno honore, & obseruatione concilij sui per honestum & vtile (**comprehended in these words** Foyall & Loyall) salua Fide Deo & terræ Principi.

Seruitij

¶ *Service.* (c) Seruitium in Lege Angliæ regulariter accipitur pro seruitio quod pertenentes Dominis suis debetur ratione feodi sui: But seruitium est duplex, Spirituale, whereof more shall be said in the Chapter of Frankalmoigne; & Temporale, whereof our Author here treateth: And he beginneth with Homage, first, because it is most honourable, for, Honor plus est in honorante, quam in honorato. 2 It is Pluis humble de reuerence, and both of these for sins causes on the part of the Tenant. First, The Tenant when he doth his homage is discinctus, disarmed or vngarded. Secondly, Nudo capite, bare headed. Thirdly, Ad pedes Domini super genua proiectus. Fourthly, Ambas manus iunctas inter manus Domini porrigit. Fiftly, Per verba omni supplici veneratione plena, he saith, Ieo deueigne vostre hõe, &c. And for three causes on the part of the Lord: First, The Lord doth sit. Secondly, Hæ includeth his Tenants hands betweene his owne. Thirdly, The Lord sitting killeth the Tenant. Prudent antiquitie did for the more solemnitie and better memorie and obseruation of that which is to be done, expresse substances vnder ceremonies.

(c) 2.H.4 6.

Nil sine prudenti fecit ratione vetustas.

¶ *Ieo deueigne vostre home de vie & de member.* And therefore he is discinctus, for that he must neuer be armed against, or opposite to his Lord, but both life and member must be readie for the lawfull defence of his Lord.

Glanvil & Mir. vbi supra.

¶ 2 *De Terrene honor,* Expressed by kneeling at the feet of his Lord.

Bract.fo.80. Brit.f.173.b.ac. Flet.li.3.ca.16.

3 Debet quidem tenens manus suas vtrasque ponere inter manus vtrasque domini sui per quod significatur ex parte Domini protectio, defensio, & warrantia, & ex parte tenentis reuerentia & subiectio. So as the holding vp of the Tenants hands betokeneth reuerence and subiection, and the Lords inclosing of his Tenants hands betweene his owne, betokeneth protection and defence.

¶ 4 *Et a vous serra foyal & loyal, & foy a vous portera, &c.* This saith, Fides, or Fœdus perpetuum, this perpetuall league betweene the Lord and the Tenant, is expressed by the Lords kissing of the Tenant: And some say, That Fœdus dicitur à fide, quia fides interponitur: And so firme and strong was this league betweene them, that by the antient Law of England, Nihil facere potest tenens propter obligationem homagij, quod vertatur Domino ad exhæredationem, vel aliam atrocem iniuriam. Nec Dominus tenenti è conuerso, quod si fecerint dissolnitur & extinguitur homagium omnino & homagij connexio & obligatio & erit inde iustum iudicium cum venerit contra homagium & fidelitatis Sacramentum quod in eo in quo delinquunt puniantur, s. in persona Domini, quod amittat dominium, & in persona tenentis, quod amittat tenementum.

Bract.vb.sup Brit.fo.174.

¶ *Des tenements queux ieo claime a tener de vous.* Britton saith, That (a) in doing of homage he must name the Lands or Tenements for which he doth homage in certaintie, and the reason is, Ne in captione homagij contingat Dominum per negligentiam decipi vel per errorem.

(a) Brit vbi sup. Bract.vb sup. Glanuil.li 9.ca.1. Mir.Ca.3.de Homage.

For the better vnderstanding of that which shall be said hereafter, it is to be knowen, That first, there is no land in England in the hands of any Subiect, (as it hath beene said) but it is holden of some Lord by some kind of seruice, as partly hath beene touched before.

Secondly, All the Lands (b) within this realme were originally derined from the Crown, and therefore the King is soueraigne Lord, or Lord paramont, either mediate or immediate of all and euery parcell of land within the Realme.

(b) 18.E.3.35.44.E.3.5. 48.E.3.9.8.H.7.12.

Thirdly, That in antient time Lords vpon the creation of their Tenures did not onely reserue rents, seruices, and profit, &c. for which they might destreyne and haue other remedie, but also tooke an humble submission of his Tenant by promise and oath, (for to homage fealtie is incident) to be true and faithfull to him for the Tenements holden of him, which submission is called homage and fealtie, according to the tenure reserued.

¶ *Salue le foy que ieo doy a nostre Seignior le Roy.* Both because there is Homagium ligeum which is due to the King onely, and also because he is soueraigne Lord ouer all.

Glanvil li.9.ca.1. Mir.cap.3. de Fealtie Bract. Vbi sup. Brit.vbi sup.

I haue seene an antient Record in Anno 6. Edw.1. in these words, Michael de North qui sequitur pro Rege quæritur quod cum Dominus Rex ratione regiæ dignitatis & Coronæ suæ tale habeat priuilegium quod nullus in regno suo de aliquo qui sit in regno Angliæ alicui homagium facere debeat, vel aliquis huiusmodi homagium ab aliquo recipere debeat nisi facta mentione de homagio Domino Regi debit eidem Domino Regi fideliter obseruand Wakerus Exon Epus,

Inter Inquis. apud Lanceston, anno 6.E.1. Cornub. in Thes.

in contemptu domini regis & ad manifestam quoad priuilegium predictum ipsius domini regis exhæredationem, & ad damnum & dedecus ipsius domini regis ad Valenciam decem Mill' librarum de Henrico de Pomeray Thoma de Kanc' Iohanne de bello prato Laurencio filio Ric. Iohanne le Soer, Willielmo de Alex', Eudone de Tranael Rogero le gros, Iohanne le Lunge, Rad. de Beuill, Guidone Nouant, Willielmo de Rouskerrek, & Hen: Cannel accepit seruitia contra priuilegium predict', nulla facta mentione de homagio & fidelitate domino regi debitis. And iudgement in the end was giuen against the said Bishop.

℣ Roy. Our Ancestors the Saxons termed him Coning or Cyning a name signifying power and skill, which by way of contraction we now call King. This name the Saxons with a small alteration had from the Britaines who called him Koningh, Koninckc; in French he is called Roy, in Italian Re, in Spanish Rey all derined from the Latyn Rex of the true signification whereof you shall reade (d) plentifull matter in our old bookes.

So as homage is deuided first In homagium ligeum, & non ligeum.

2. In homagium antecessorũ, & non antecessorũ. It is here necessary to be knowne, what tenant, that holdeth by homage shall do homage. (e) Item videndũ quis potest homagium facere. Sciendu est quod quilibet liber homo tam masculus quam femina, clericus & laicus, maior & minor, dum tamen electi in episcopos, post consecrationem homagium non faciant, quicquid fecerint ante, sed tantum fidelitatem. Conuentus autem Homagium non faciet de jure sicut nec Abbas, nec Prior eo quod tenent nomine alieno scilicet nomine Ecclesiarum.

(g) One within the age of 21. yeares may doe homage, but Bracton saith hee cannot doe fealty, because in doing of fealty he ought to be sworne which an infant cannot be. But some opinions be in our bookes to the contrary, viz. that an infant shall doe fealtie, but I take it to be meant of homage; and herewith (h) agreeth Britton who saith, Et tout soit que enfant deins age fait homage, pur ceo ne volons nous my que il face serement de fealtie, jesque a taunt que il soit de pleine age; & tout soit ceo comon dit del people que fait de enfant fait deins age ne soit fait my a tener estable: volons nequedent que chescun home & chescun feme de quel age que il soient, facent homage a lour seignour solonque lestatut de la grand charter.

Glanvill saith. (i) Women shall not doe homage, but Littleton saith that a woman shall doe homage, but she shall not say, Ieo deveigne vostre feme, but Ieo face a vous homage, and so is Glanuill to be understood, that she shall not doe compleate homage.

(d) *Mirror ca.1. §.2. & ca.2.§.1. & 2. Bracton fo.107.368.369. 340. Fleta.lib.1.cap.5. Fortescue, cap.8. & 37. Staun.pl.cor.58.99. & Prer.65.*

(e) *Glanuill lib.9.ca.1. Bracton fo.78.b. Britton.ca.68.fo.170.171. Fleta lib.3. ca.16.*

(g) *Glanuil, lib.9.cap.1. Bracton.lib 2.78. Fleta lib.3. cap 16.acc. 21.E.3.40. 26.E.3.63.64. 32.E.3.age.80. & 118. per que seruitia.y. 13.H.4.5. 33.H.6.16. 20.E.3. per que seruic.24.*

(h) *Britton.fo.171.*

(i) *Glanuil.lib.9.ca.1. F.N.B.157. Regist.296. Briston ibi supra Mirror ca.1.§.3.*

Sect. 86.

(k) *Glanuill lib.1.cap.9. in fine. Britton lib.2.78. Bracton cap.68. Fleta lib.3.cap.16.*

(l) *Vid.Sect.96.& 133.*

¶ NO man of Religion when (k) hee doth homage shall say, Ieo deueigne vostre home, because hee hath professed himselfe the man of God, yet shall he doe homage, and shall say, (l) Ieo face a vous homage, & à vous serra foyall & loyall, &c. and note that here religion is taken largely, for it extends not only to regular persons as Abbots and the like, but also to all Ecclesiasticall persons, as Bishops, Deanes or any other sole Ecclesiasticall body politique, and so it is in vse at this day which also appeareth in our old bookes.

And it is to bee obserued that in old bookes and records, the homage which a Bishop, Abbot or other man of religion doth is called Fealtie, for that it wanteth these words (Ieo deveigne vostre home.) But yet in iudgement of law it is homage, because he saith (I doe to you homage, &c. and so of a woman.

¶ Mes si vn Abbe, ou vn Prior. ou auter hõe de religion ferra homage a son seignior, il ne dirra: Jeo deueigne vostre home, &c. pur ĉ q̃ il ad luy professe pur estr̃ tant solement le home de Dieu: mes il dirra issint, Jeo vous face homage & a vous serra foial & loial, & foy a vous portera des tenements que ieo teigne de vous, saue la foy que ieo doy a nostre Seignior le Roy.

BVt if an Abbot or a Pryor or other man of religion shall doe homage to his Lord, he shall not say, I become your man, &c. for that hee hath professed himselfe to be only the man of God. But hee shall say thus. I doe homage vnto you, and to you I shall bee true and faithfull, and faith to you beare for the tenements which I hold of you (sauing the faith which I doe owe vnto our Lord the King.

Sect. 87.

¶ *Pur ceo que nest conuenient, &c.* **By this it appeareth** (m) **that** argumentum ab inconuenienti plurimum valet in lege, **as often shall bee obserued hereafter.** Non solum quod licet, sed quid est conueniens est considerandum, nihil quod est inconueniens est licitum.

(m) *For li'erasons ab inconuenienti. Vid. Sect.* 138. 139.231.269.440.478. 665.722.730. 21.H.7.13. F.N.B.230.d. 16.H.7.9.

¶ Item si feme sole ferra homage a son seignior, el ne derra: Jeo deueigne vostre feme, pur ceo que nest conuenient que feme dirra q̃l el deuiendra feme a ascun home forsque a sa baron quant el est espouse, mes el dirra: Jeo face a vous homage, & a vous serra foial & loial, & foy a vous porteray des tenements que ieo teigne de vous, salue la foy que ieo doy a nostre seignior le Roy.

ALso if a woman sole shall doe doe homage, shee shall not say I become your woman, for it is not fitting that a woman should say that she will become a woman to any man but to her husband when shee is married, but she shall say, I doe to you homage, and to you shall bee faithfull and true and faith to you shall beare for the tenements I hold of you. Sauing the faith I owe to our Soueraigne Lord the King.

Sect. 88.

¶ Item home puit veier en vn bone note M.15.E.3. Lou vn home & sa feme fiet̃ homage & fealty en le common banke, q̃l est escrie en tiel forñ. Nota que J. Leuknor & Elizabeth sa feme, fiet̃ homage a W. Thorpe en cest maner, lun & lauk tiendront iointm̃t lour mains enter les mains W.T. & le baron dit en cest forme: Nous vous ferromus homage, & foy a vous porterons, pur les tenements q̃ nous teignomus de A. vr̃e consor, q̃ a vous ad graunt nostre seruices en B. & C. et auters villes, &c.

ALso a man may see a good note in M. 15.E.3. where a man and his wife did homage and fealtie in the Common place which is written in this forme. Note that *I. Lewknor* & *Eliz.* his wife did homage to *W. Thorpe* in this manner. The one and the other held their hands ioyntly betweene the hands of *W.T.* and the husband saith in this forme. Wee doe to you homage, and faith to you shall beare for the tenements which wee hold of *A.* your Conusor, who hath granted to you our seruices in *B.* and *C.* and other townes, &c. against all nations,

(n) *Mich.*15.E.3. tit. Auowrie 109.

¶ In this (n) record three things are to bee obserued.

1. How necessary, and profitable words and obseruations are; albeit they were not published in print, for at the time when Littleton wrote, this record was not printed.

2. That the husband and wife doing homage, the husband shall speake the words for them both, viz. (we doe you homage, &c.

3. That the homage which the husband and wife doe, is the very homage which the wife should doe alone but this ioynt homage done by the husband and wife is intended to bee before issue had betweene them whereof more shall bee said hereafter. (o) And it is to bee obserued that very

(o) *Vid. Hill:* 17.E.2. *Rot. Parlia. &c.*

very few cases ruled or resolued in the raigne of Edward the Third, but the same or the like had been ruled or resolued in the Raignes of Edward the Second, Edward the First, or before, as for example or warrant hereof.

encounter touts gents: ſalue la foy que nous deuons a noſtre Seignior le Roy, & a ſes heires, & a noſtre auters ſeigniors: & lun & lauter luy baſerõt. En puis ils fiẽt fealtie et lun et lauẽt tyendrõt lour mains ſur vn liure & le barõ dit les poſt, et ambiõ baſeront le liũ.

ſauing the faith which we owe to our Lord the King and to his heires, and to our other Lords, and both the one and the other kiſſed him. And after they did fealtie, and both of them hold their hands vpon the Booke, and the husband ſaid the words, and both kiſſed the Book.

Sect. 89.

¶ *Et a mes auters Seigniours.* This ſauing for other Lords is good for explanation, albeit the homage is referred only to the Tenements which he holdeth of him to whom he doth the homage.

¶ Nota ſi vn home ad ſeueral tenancies queux il tient de ſeuerals Seigniors, s. cheſcun tenancy per homage, donque quant il fait homage a vn des Seigniors, il dirra en le fine de ſon homage fait, ſalue la foy que ieo doy a noſtre Seignior le Roy, & a mes auters Seigniors.

NOte if a man hath ſeuerall Tenancies which he holdeth of ſeuerall Lords, that is to ſay, euery tenancie by homage, then when hee doth homage to one of his Lords, hee ſhall ſay in the end of his homage done, ſauing the faith which I owe to our Lord the King, and to my other Lords.

Sect. 90.

¶ En *droit dun auter.* As the Husband and Wife in the right of his Wife; the Biſhop in right of his Biſhoprike, &c. the Abbot or Prior in right of his Monaſterie, &c. But no Corporation aggregate of many perſons capable, bee the ſame Eccleſiaſticall or Temporall can doe homage, as a Deane and Chapter, Maior, and Comminaltie; and ſuch like, albeit they bee ſeiſed in fee of lands holden by homage yet ſhall not they doe homage. And the reaſon is becauſe that homage muſt be done in perſon, and a Corporation aggregate of many cannot ap-

(p) 33. H.8. tit. fealtie Br. 15. Lib.4. fol.11. Lib.7. fol.10. Lib.10. fol.31.

¶ Nota que nul ferra homige, mes tiel que ad eſtate en fee ſimple, ou en fee taile, en ſon droit demeſne, ou en droit dun auter. Car il eſt vn Maxime en ley que il q̃ ad eſtate forſqz pur terme de vie, ne ferra homage, ne prendra homage. Car ſi feme ad terres ou tenements en fee ſimple, ou ẽ fee taile,

NOte, none ſhall do homage but ſuch, as haue an eſtate in fee ſimple, or fee taile in his owne right, or in the right of another. For it is a maxime in law, that hee which hath an eſtate but for terme of life, ſhall neither doe homage or take homage. For if a woman hath lands or tenements in fee ſimple or in fee taile

queux

queux el tient de ſon Seignior per homage, & prent baron, & ont iſſue, donque le baron en la vie la feme ferra homage, pur ceo que il ad title dauer les tenements per le curteſie Dengleterre (il ſurueſquiſt la feme, & auxy il tient en droit de ſa feme. Mes ſi la feme deuy deuant homage fait per le baron en la vie ſa feme, & le baron ſoy tient eins come tenant per le curteſie, donques il ne ferra homage a ſon ſeignior, pur ceo que il adonque nad eſtate forſque pur terme de vie.

¶ Plus ſerra dit d homage ẽ le tenure per homage auncestrel.

which ſhee holdeth of her Lord by homage and taketh husband, & haue iſſue, then the husband in the life of the wife ſhall doe homage, becauſe he hath title to haue the tenemẽts by the curteſie of *Eng.* if he ſuruiueth his wife, and alſo hee holdeth in right of his wife, but if the wife dies before homage done by the husband in the life of his wife, and the husband holdeth himſelfe in as tenant by the curteſie, then hee ſhall not doe homage to his Lord, becauſe hee then hath an eſtate but for terme of life.

¶ More ſhall bee ſaid of homage in the tenure of homage anceſtrell.

peare in perſon, for albeit the bodies naturall whereupon the bodie Politique conſiſts may bee ſeene, yet the bodie Politique or Corporate it ſelfe cannot bee ſeene, nor doe any act but by Atturney, and homage, muſt euer be done in perſon, &c. And albeit an Abbot and Couent is a Corporation aggregate of many, yet becauſe the Couent are all dead perſons in law, the Abbot alone in nature of a ſole Corporation ſhall doe homage.

¶ *Vn maxime en Ley.* A maxime is a propoſition, to bee of all men confeſſed & granted without proofe, argument, or diſcourſe Contra negantem principia non eſt diſputandum. But of this ſomewhat hath beene ſaid before.

¶ *Il que ad eſtate forſque pur terme de vie.* (q) A Parſon or Vicar of a Church that hath a qualified fee, (r) and yet to many intents vpon the matter but an eſtate for life can neither receiue homage nor doe homage as a Biſhop an Abbot, or any ſuch like that hath a fee abſolute may. (ſ) So if a man and his wife be ſeiſed in fee of a Seignior in the right of his wife, the husband ſhall not receiue homage alone but he and his wife together. (t) But if the husband in that caſe hath iſſue by his wife, then he ſhall receiue homage alone during the life of his wife, and the reaſon is becauſe he by hauing of iſſue is intitled to an eſtate for terme of his owne life, in his owne right, and yet is ſeiſed in fee in the right of his wife, ſo as he is not a bare tenant for life. But if his wife die, then he hath only but an eſtate for life, and then he cannot receiue homage. Yet tenant for life or yeares of a Seignior, (u) ſhall haue ward, Marriage and Reliefe, and ſhall ſuppoſe that the Tenant died in the fealtie of the Pl. (w) Fieri poſſunt homagia libero homini tam maſculo quàm feminæ tam Maiori quàm minori tam clerico quam laico.

(q) *Glanuil. lib.9.cap.2. Britton. fol.170. Temps E.1.tit.Iurisdictum 13.*
(r) *8 E.4.28. 39.E.3.15. 3.E.3. auowrie 175.*
(ſ) *2.E.2. auowrie 183. F.N.B. 257. 13.E.3. gard. 39.*
(t) *27.Aſſ.p.51. F.N.B.257. 13.H.6. auowrie 21. 43.E.3.13.44.E 3.41. 3.E.3. auowrie 175. 13.E.3.2.gard 39. 22.E.3.fol.19.gard.44*
(u) *6.E.2.gard.122. 13.E.3.gard 39. 22.E.3.gard.44.*
(w) *Glanuil lib.9.cap.3. 18.E.3.7. 43.E.3.13. 44.E.3.41. 13.H.6.auowrie.21. 8.H.6.13.7.E.4.27. F.N.B.257.*

¶ *Et ount iſſue, donque le baron en la vie la feme ferra homage.* The reaſon hereof is rendred before, & alſo that after the death of his wife he being but a bare tenant for life ſhall doe no homage; for regularly it is true that hee that cannot receiue homage in reſpect of the weakneſſe of his eſtate in the Seignior, ſhall not do homage if he hath a like eſtate in the tenancie.

If a man hold of the King and hath iſſue diuers daughters and dieth, the King ſhall haue homage of euery one of theſe Daughters And this (a) appeareth by the Statute de Hibernia anno 14.H.3. to be the Common Law, for that Act ſaith, In regno noſtro Angliæ talis eſt lex & conſuetudo quod ſi quis tenuerit de nobis in capite, & habuerit filias herædes ipſo patre defuncto anteceſſores noſtri habuerunt & ſemper nos habuimus & cepimus homagium de omnibus huiuſmodi filiabus, & ſingulæ earum tenerent de nobis in capite in hoc caſu. And therefore where by the (b) Statute De prærogatiua Regis, it is prouided, Si vna hæreditas, &c. that is but an affirmance of the Common Law. (c) But this is to bee vnderſtood where the coheires be of full age, for if they within age and in ward to the King, Primogenita tantum faciet homa-

(a) *14.H.3.tit.prærog.5.*
(b) *Prærog. Regis cap.5.*
(c) *Statut. de homagio capiendo Temps E.1.*

homagium prefe & ſororibus ſuis, & aliæ ſorores cum ad ætatem peruenerint faciẽt ſeruitia Dominis fœdorum per manum primogenitæ. (d) **And therefore if a man holds of a common perſon by the ſeruice of homage, and hath iſſue diuers daughters and dieth, the eldeſt daughter only ſhall doe homage for her and all her ſiſters. And this appeareth alſo by the Statute of Hibernia.** Primogenita tantum faciet homagium Domino pro ſe & omnibus ſororibus ſuis. **And the reaſon is there rendred afterward,** Quia omnes ſorores ſunt quaſi vnus hæres de vna hæreditate. (e) **But if the Coperconers in that caſe make partition, then euery one ſhall doe homage, becauſe now it is not** Vna ſed diuerſa hæreditas. (f) **And ſo it is if one make a feoffment in fee (which is a partition in law for that part) that feoffee ſhall doe homage, for euery Tenant in common ſhall doe ſeuerall ſeruices. And it hath beene adiudged (g) in our Bookes that if the eldeſt Copercener doe homage to the Lord, and afterwards the younger ſiſter maketh a feoffment in fee of her part, the Lord ſhall haue homage for the part of the younger ſiſter, for that which was vna hæreditas, one Inheritance by law, by the alienation which is her act is (as hath beene ſaid) diuided and become in groſſe and the Copercenaris defeated.**

(d) Glanvill. lib.7.cap.3. & lib.9.c.p.2. Bract. lib.1. de homag.c.p. end. & lib.2. fol. 78.80. Britton. fol.168.b. 171.172. Fleta lib.3.cap.16. & lib.2.cap.60. & lib.5.ca.9. F.N.B.161.159.259. Stauf. prer.23.24.

(e) F.N.B.162. Vide 11.E.3. auowrie.101.

(f) 45.E.3.23.24.E.3 73. Marlbrid.c.ap.9. F.N.B.162.

(g) 2.E.2. auowrie.179.

But if Tenant enfeoffe diuers men in fee iointly, (h) all theſe iointenants ſhall iointly doe their homage, and their fealtie alſo. (i) If homage bee due by the Tenant, and hee maketh a feoffment in fee, the Feoffor ſhall not doe homage, becauſe albeit he is ſuppoſed to be Tenant in ſome Caſes quant al auowrie, yet the Feoffee is very Tenant, and homage ſhall euer be done by the verie Tenant, but that very Tenant needeth not to be very Tenant of the Land, and therefore the Meine becauſe he is very Tenant to the Lord Paramont (though he be not Tenant of the land) ſhall doe homage. And ſo it is of the Diſſeiſee, and of Tenant in taile, after a feoffment in fee, for in that caſe the Donee is very Tenant to the Donor.

(h) 7.E.4.27.28. 14.H.4.38. 1.H.5.grant.43. 31.E.3.gard.116.

(i) 48.E.3.8. 15.E.4.13. 5.E.4.3.

If a Tenant that holdeth by homage maketh a feoffment in fee of part (k) that Feoffee ſhall doe homage, and ſo ſhall euery Feoffee of what part ſoeuer.

(k) 22.E.4.22.

If there be two Coperconers or Iointenants of a Seigniorie, if the Tenant doth homage and fealtie to one of them (l) he ſhall be excuſed againſt the other.

(l) 3.E.2. auowrie 187. 13.H.405. 13.R.2.tit. auowrie 89. 8.H.3.tit. preſcription 38. Hill.22.E.1.coram Rege Rot.43.

If homage be parcell of a tenure, it is a preſumption that the tenure is by Knights ſeruice, vnleſs the contrarie be proued, but of it ſelfe it maketh not Knights ſeruice. And yet by cuſtome the heire of him that holds by homage only may be in Ward.

More ſhall be ſaid of homage in the title of homage anceſtrell.

CHAP. 2. *Section* 91.

Fealtie.

(a) Bract. lib.2. fol.80. Britton. Regiſt. origin. 302. Mirror. cap.3. de ſerement. & de fealt. Statut. de 17.E.2. tit. homage.

FEaltie in French is feaulty, and is (a) deriued of the Latine word fides, or fidelitas.

(b) Bracton. lib.2. fol.80.a. Britton. fol.173. Fleta lib.3.cap.16. Littleton. fol.29. nu.132. 40.E.3.34. 9.H.6.43. 10.H.6.13. 5.H.5.12. 9.E.4.1. 21.E.4.29. 5.H.7.11.

Et quant franktenant. Euery Freeholder except Tenant in Frankalmoigne ſhall doe Fealtie. (b) And yet ſome that are not tenants of any Freehold ſhall doe fealtie, as a tenant for yeares ſhall doe fealtie. Bracton ſaith, De nullo tenemento quod tenetur ad terminum, ſit homagij ſit tamen inde fidelitatis Sacramentum.

Que a vous ſerra foial & loial, &c. & foy a vous portera des tenements que ieo claime a tener de vous, & que loialment a vous ferra les cuſtomes & ſeruices, &c.

FEaltie, idem eſt quod fidelitas & Latin, Et quãt frãktenant ferra fealtie a ſ Seignior, il tiendra ſa maine dexter ſur vn Lieur et dirra iſſint; Ceo oyes vous mon Seignior, que ieo a vous ſerra foial et loial, et foy a vous portera des teneñts que ieo claiñ a tener de vous, et que loialment a vous ferra les cuſtomes & ſeruices q̃r faire a vous doy as termes aſſignes, ſicome moy aide Dieu & ſes Saints, &c.

FEaltie is the ſame that *fidelitas* is in Latine. And when a freeholder doth fealtie to his Lord, he ſhall hold his right hand vpon a Booke, and ſhall ſay thus. Know ye this my Lord, that I ſhall bee faithfull and true vnto you, and faith to you ſhall beare for the Lands which I claime to hold of you, and that I ſhall lawfully do to you the cuſtomes and ſeruices which I ought to doe at the termes aſſigned, ſo helpe me God and his Saints, &c.

(c) Fealtie

(c) Fealtie is a part of homage, for all the words of Fealtie are comprehended within homage, and therefore fealtie is incident to Homage. (c) *Mirror cap.1. de ſerend. & de Fealtie.*

¶ *Sicome moy aide Dieu.* As homage is the more honourable ſeruice, ſo Fealtie is a ſeruice more ſacred becauſe he is ſworne thereunto. And the reaſon wherefore the Tenant is not ſworne in doing his homage to his Lord is, for that no ſubiect is ſworne to another ſubiect to become his man of life and member but to the King only, and that is called the oath of Allegiance or homagium ligeum. And thoſe words for that purpoſe are omitted out of Fealtie, which is to be done vpon oath. And Littleton ſaid well (when a Freeholder doth Fealtie) (d) for the Fealtie of him that holdeth in Villenage differeth from the fealtie of the Freeholder. For the Villeine holding his right hand vpon the booke ſhall ſay thus to his Lord, Heare you my Lord A. that I A B. from this day forward ſhall be to you true and faithfull, and ſhall owe you Fealtie for the land that I hold of you in Villenage and ſhalbe iuſtified by you in body and goods ſo helpe me God, &c. as by the act appeareth. (d) *Stat. de 17. E. 2. tit. Homage, in le abridgement.*

Section 92.

¶ ET graund diuerſitie y ad p enter fealans ô fealtie et de homage, car homage ne poit eſtre fait forſqz al ſñr m: Mes le Seneſchal de court le Sñr, ou Bailife, puit prender fealtie pur le Seignioz.

AND there is great diuerſitie betweene the doing of fealty, and of homage; for homage cannot be done to any but to the Lord himſelfe, but the ſteward of the Lords Court, or Bailife may take fealtie for the Lord.

¶ BRacton lib. 2. fo. 80. ſaith thus; Sciendum eſt quod non per procuratores nec per litteras fieri poterit homagium ſed in propria perſona tam domini quam tenentis, capi debet & fieri. *Bracton. lib. 2. fo. 8. 21. E. 4. 17. acc. 2. E. 3. 10. 32. H. 6 23. lib. 9. fo. 76.*

¶ *Mes le ſeneſchal &c. ou Bailife poet prender fealtie.* This is ſo euident as it needeth no explanation. (e) *Vid. For the ſignification of Seneſchal and Bailife Sect. 78. 79. 248. & 379.*

Sect. 93.

¶ ITem tenant a terme de vie ferra fealtie, et vncore il ne ferra homage. Et diuers auters diuerſities y ſont perenter homage et fealtie.

ALſo tenant for terme of life ſhall doe fealtie, and yet hee ſhall not doe Homage. And diuers other diuerſities there be between Homage and fealtie.

¶ THe Tenant muſt do fealtie in perſon becauſe hee muſt bee ſworne vnto it, and no man can ſweare by the Common Law by Attorney or Procter. *Lib. 9. fo. 76.*

Section 94.

¶ ITem home poit beier 15. E. 3. coment home et ſa feme fieront homage et fealtie en common banke, quel eſt eſcript deuant en Tenure de homage.

ALſo a man may ſee in 15. *E.* 3. how a man and his wife ſhall doe homage and fealty in the Common place, which is written before in the tenure of Homage.

¶ THis is euident and appeareth before, and if Lords knew what benefit they may reape by receiuing of Homage and Fealtie they would not neglect them, (e) for by the receiuing of either of them, it is a ſufficient ſeiſin of all manner of ſeruices as by the words (f) of either of them appeareth. Now if it be demanded, what (e) *Lib. 4. fo. 8. & 9. Bonilis caſe. 13. E. 4. 5.* (f) *Vid. Sect. 118. 130. 131. 138.*

What difference is betweene the oath of Fealtie, when it is done to the King in respect of a Tenure, and the oath which euerie Subiect ought to take in respect of his allegeance, Littleton here setteth downe the oath of Fealtie. Now the (g) Oath of Allegeance is thus, You shall sweare, &c. Then it may be demanded, Where and when is this oath to be taken, and it is answered, The whosoeuer is aboue the age of twelue yeares, is to be sworne in the Tourne, vnlesse hee be within some Leet, and then in the Leet: And I read amongst the lawes of Saint Edward, Quod hanc Legem inuenit Arthurus, qui quondam fuit inclitissimus Rex Britannorum, & in consolidauit & confederauit Regnum Britanniæ vniuersum semper in vnum. Huius legis autho. ritate expulit Arthurus prædictus Saracenos & inimicos a regno. Lex enim ista diu sopita fuit & sepulta donec Eadgarus Rex Anglorum excitarit, & erexit in lucem, & illam per totum Regnum obseruari præcepit. Which law in some maner is obserued at this day. But to returne to Littleton.

(g) Ex 1.ca.29. Calvins case. 7.fo.6.b.12.H.7.18.

Plus serra dit de Fealtie en le tenure en Socage, & en l' tenure en Frankealmoigne, & en le tenur per homage Auncestrel.

More shall bee sayd of Fealtie in the Tenure in Socage, and in Frankealmoigne, and in the Tenure by homage Auncestrell.

Lambert 135.

(a) Mir.ca.1.§.3. Brit.fo.162. &c. Ockam cap. Quid sit scutagium.

¶ *Escuage.* (a) In Latine Scutagium, (id est) Seruitium scuti, Seruice of the Shield, whereby it appeareth, that right interpretations and etymologies are necessarie: For, ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet.

Nomina si nescis, perit cognitio rerum.

And herewith agreeth that which is said, Primo excutienda est verbi vis ne sermonis vitio obstruetur oratio, siue lex siue argumentis.

Scutum in French is Escue, and thereof commeth the Escuer, (i.) Scutifer, which wee vsually call Armiger. (b) Of this Bracton saith, Item scutagium dicitur quòd talis præstatio ptinet ad scutum quòd assumitur & seruitium militare. And Fleta saith, Sunt quædam seruitia forinseca, & dici possunt regalia quæ ad scutum præstantur, & inde habemus scutagium, & ratione scuti pro feodo militari reputatur. And Ockam saith, Hæc itaq; summa quia nomine scutorum soluitur, scutagium nuncupatur.

(b) Bract.li.2.fo.35.a. Flet.li.3.ca.14. Ockam vbi supr. 27. Ass.52. 31. Ass.38.

¶ Escuage est appel en Latine Scutagium, **cestascauoire**, Seruitium Scuti. **Et tiel tenant que tient sa terre per Escuage, tient p seruice de Chiualer. Et auxy il est communement dit, que ascun tient per vn fee d seruice de Chiualer. Et ascun per le moity dun fee d Seruice d chiualer, &c. Et il est dit, que quant le Roy face voyage royall en Escoce pur subduer les Scotes, donqs il que tient per vn fee de Seruice de chiualer, couient estr̃ oue le Roy per 40. iours, bien et cõuenablement array pur le Guerre. Et celuy que tient sa Terre per le**

Escuage is called in Latine, *Scutagium*, that is, Seruice of the Shield; and that Tenant which holdeth his Land by Escuage, holdeth by Knights seruice. And also it is commonly said, That some hold by the seruice of one Knights fee, and some by the halfe of a Knights Fee. And it is said, That when the King makes a voyage royall into Scotland to subdue the Scots, then he which holdeth by the seruice of one Knights Fee, ought to be with the King fortie dayes, well and conueuiently arrayed for the War: and hee which holdeth his land by the moity of a Knights

moity

moitie dun Fee de chiualer couient este oue le Roy per 20. iours. Et il que tient son Terre per le quart part dun Fee de chiualer couient este oue le Roy per 10. iours, et issint que pluis, pluis, et que meins, meins.

fee, ought to bee with the King twentie dayes: and hee which holdeth his land by the fourth part of a Knights fee, ought to be with the King ten dayes, and so he that hath more, more, and he that hath lesse, lesse.

¶ (c) *Et tiel tenaunt que tient son terre per Escuage tient per seruice de Chiualer.* (d) For as Fealty is incident to homage, so homage and Knight Seruice be incident to Escuage, and by the grant of Seruices, Escuage passeth with the rest. Euerie Tenure by Escuage is a tenure by Knights Seruice: but euerie Tenant that holdeth by Knights seruice, holdeth not by Escuage, as shall be said hereafter. But note here the wisedome of Antiquitie, (e) mavult enim Princeps domesticos quam stipendiarios bellicis apponere casibus, that is, to be serued in his warres by his owne subiects, rather than by stipendarie Forreners.

(c) *Mir.ca.1.§.3.*

(d) *2.E.3.8.b.19 E.3.Auowrie 294.26.H.8.1.a. 20 E.3.Per quæ Seruic.11. 43.E.3.22.F.N.B.83.84*

(e) *Lib.vlt.*

¶ *Vn fee de seruice de Chiualer.* (f) There is great diuersitie of opinions concerning the Contents of a Knights Fee, that is, how much land goeth to the liuelyhood of a Knight; for some say that a Knights fee consisteth of eight hides, and euery hide conteyneth an hundred acres, and so a Knights fee should containe 800. acres; others say that a Knights fee containeth 680. acres; others say that an organge of lands containeth 15. acres, and eight organgs make a plowland; by which account a plowland containes 120 acres, and that virgata terræ, or a yardland containeth 20. acres. But I hold that a Knights fee, an hide or plowland a yardland or Organge of land doe not containe any certaine number of acres. But a knights fee is properly to be esteemed according to the qualitie and not according to the quantitie of the land, that is to say, by the value and not by the content. And therefore it is very true which Master Camden in his Britannia pa.136. saith, viz. Subsequenti ætate ex censu vt colligitur facti fuerunt equites, &c. And Antiquitie thought that twenty pound land was sufficient to maintaine the degree of a Knight, as appeareth in the ancient treatise de modo tenendi Parliamentum tempore regis Edw: filij regis Etheldredi. where it appeareth that comitatus (to wit) an Earledome constat ex viginti feodis vnius militis, quolibet feodo computato ad viginti libratas: Baronia constat ex 13. feodis, & 3. parte vnius feodi militis secundum computationem predictam; Vnum feodum militis constat ex terris ad valentiam 20.l. which Antiquitie I cite for that it concurreth with the act of Parliament. anno 1.E 2. de militibus, by which act Census militaris the state of a Knight is measured by the value of xx. pound per annum, and not by any certaine content of acres; and with this agreeth the statute of W.1.cap.35. and F.N.B.fol.82. where twenty pound of land in Socage is put in Equipage of a Knights fee, and this is the most reasonable estimate, for one acre may be better then many others, so as he which hath 680. or 800. acres of some barren land had not according to the ancient account a sufficient reuenue to maintaine the degree of a Knight, and he which had a lesse number of acres of some land of the value of xx. pound per annum had a sufficient liuelyhood in those dayes for the maintainance of a Knight. So Antiquity thought that 400. markes of land per Annum was a competent liuelihood for a Baron and 400. pound per annum, Ad sustinendum nomen & onus of an Earle, and of late time 800. markes per Annum of a Marquesse, and 800. pound per Annum of a Duke, so that their yearely reuenue was estimated by the value and not by the content. And one plowland, carucata terræ, or a hide of land, hida terræ (which is all one) is not of any certaine content, but as much as a plow can by course of husbandry plow in a yeare. And therewith agreeth Lambard verbo Hide. And a plow land may containe a messuage wood meadow and pasture, because that by them the plowmen and the cattell belonging to the plow are maintained. Vide Temps E.1.tit.Briefe 860. 4.E.3.47. Pl.com.in Hill and Granges case, fo.168. Vid.6.E.3. fo.42. and 39.H.6 8.a. And venerable Beda calleth a Plowland familiam a family, because it containeth necessary things for the maintenance of a family. And Prisot well saith in 35.H.6. fo.29 that a plow may till more land in a yeare in one Country then in another, and therefore it stands with reason, that a plowland should be lesse in one place than in another. 41.E.3. tit.fine 40. and 13.E.3. fine 67. A fine shall not be receiued De vna virgata terræ for the vncertaintie vid.39.H 6,8. But an acre of land is certaine by the statute De terris mensurandis. Note also (Reader) that euery plowland of ancient time was of the yearely value of fiue nobles per Annum, and these was the liuing of a plowman or Yeoman, and Ex duodecim carucatis constabat vnum feodum militis which amount to 20. pound per Annum. And this you may see Termino pasch. anno 3.E.1. Coram Rogero de Seyton & socijs suis Iusticiarijs apud Westm.

(f) *Lib.9.fo.123. in Lowes case.*

Vid lib.7. fol.33 34. Newis case.

Westm. Ebor Ro.10. Radulphus de Normanville petens in brevi de medio queritur contra Lucam de Kyme quod cum ipsa teneat de ipso duas carectatas terræ in Coningston per homagium & servitium militare, vnde duodecim carucatæ terræ faciunt vnum feodum militis pro omni servitio, ipsa distrinxit ipsum ad faciendũ sectam ad curiam suam de Thorneton in Craven, &c.

And it is to be observed that the relefe of a Knight and all above him which be noble, is the fourth part of their yearely Revenue, as of a Knight five pound which is the fourth part of 20. pound. So Vna baronia constat ex 13 feodis militum & de 3. parte vnius feodi militis, which amount to 400. Markes, and therefore his relefe is the fourth part of this, viz. 100. markes; and an Earledome consists of twenty Knights fees which amount to 400. pound (as before it appeareth by the said ancient Record De modo tenendi Parliamentum, &c.) and therefore his relefe is 100. pound. And this also appeareth by the statute of Magna Carta, cap. 2. and by the equitie of this statute, inasmuch as a Marquisdome which consists of the revenue of two Baronies which amount to 800. markes, shall pay according to that iust proportion his relefe 200. markes, and because a Dukedome consist of the revenues of two Earledomes, viz. 800. pound per Annum, a Duke shall pay 200. for a relefe, which is also the fourth part of his revenue, and with this agree the Records of the Exchequer.

Note (Reader) At the time of the making of the statute of Magna Carta, 5.9.H.3. there was not any Duke, Marquesse or Vicount in England (and therefore the statute could not make mention of them) and Edward the eldest sonne of King E.3. called the blacke Prince was the first Duke in England after the Conquest, and Robert Earle of Oxford in the raigne of R.2. was the first Marquesse. Sic enim inter ordines Angliæ in sua Brittannia testatur Camden vbi supra. Et titulus Marchionis serius ad nos devenit, nec ante R.2. tempore cuiquam delatus: ille enim Robertum Vere Oxoniæ comitem delicias suas primum marchionem Dubliniæ designavit, merumque erat honoris nomen. Hæc, ille. And before the raigne of H.6. there was not any Vtiscount. Sic enim idem Author vbi supra asserit. Post comites vicecomites ordine sequuntur Vicounts nos vocamus; hæc vetus officij sed nova dignitatis appellatio, & H.6. tempore ad nos primum audita, Hæc ille, Et dominus de Bello monte was the first Vtiscount Created by King H.6. Vide Cassianeum in gloria mundi parte 4. consider 55. that this Dignity of a Vicount is of great antiquitie in other Realmes.

7 H.4.9. 31. Ass.30. 26. Ass.66. 27. Ass.52. 8.E.3. 154.

Bracton lib.2. 36. Item sunt quædam servitia quæ dicuntur forinseca, quamvis sunt in carta de feoffamentis expressa & nominata, & quæ ideo dici possunt forinseca, quia pertinent ad dominum regem, & non ad dominum capitalem, nisi cum in propria persona profectus fuerit in servitio, vel nisi cum pro servitio suo satisfecerit domino regi, &c.

7.E.3.29. 11.H.4.7. F.N.B.28.b. & 83.g. 8.H.4.16. 28.H.6.1.b. 39.H.6.38. 6.R.2.protection. 46.19.R.2.gard.165. 17.H.6. Protection 56. 7.E.4.27. 11.H.4.7. 3.H.4.16.

¶ *Voyage royall.* A voyage royall is not only when the King himselfe goeth to warre, as Littleton here saith, but also when his Lieftenant or Deputy of his Lieftenant goeth. And what shall be said a Voyage royall shall be adiudged in this case by the Judges of the Common Law as an incident to Escuage and not by the Constable and Marshall or any other, & sic de similibus.

There is also another kinde of Voyage Royall, viz. when one goeth with the Kings daughter beyond sea to be married, &c. for such a voyage is for the good of the whole Realme, (for more profit for the Realme cannot be then to make alliance with another Nation, but of this Voyage Royall Littleton speaketh not here, but only of the Voyage Royall to warre; so as there is a Voyage Royall of warre, and a Voyage Royall of peace and amitie. And it is to be observed that he that holdeth by Castle gard or cornage holdeth by Knights service, and yet he shall pay no Escuage because he holdeth not to goe with the King to warre.

Lib. Pub in Scacc. 47.48. 19.R.2.gard.95. 6.R.2. Protection 46. 6.H.3. Aunarie 242. Vid. Rot. Claus. 8.H.3. & Finius 8.H.3. & patent. 9.H.3. mult solverunt scutagium pro exercit. in Wallia. memb. 30. & ante. Claus. 6.H.3. memb. 3.

¶ *En Escoce.* In Scotiam, this is put but for an example for if the tenure be to go in Walliam Hiberniã Vasconiã, Pictaviã, &c. it is all one. So as an ancient record Rott. De finibus Termino, Mich. 11.E.2. Sir Rich: Rockesley Knight did hold lands at Scarn by Serjeanty to be Vantrarius Regis, that is to be the Kings foze-footman when the King went into Gascoigne, donec per visus fuit pari solutarum precij 4.d. that is vntill he had worne out a paire of shoes of the price of foure pence. And this service being admitted to be perfourmed when the King went to Gascoigne to make warre, is Knight service.

Magna Carta cap. 37. Fleta lib. cap. 60.

¶ *Il que tient per vn fee de service de chivalier covient este ove le Roy per 40. iours.* But this is to be vnderstood of a Tenant that holdeth of the King immediately, for every man is bound by his tenure to defend his Lord, and both he and his Lord the King and his Countrie, and therefore if the Lord goeth not his tenant is excused. But yet if the tenant personalie goeth with the King, it excuseth all the meanes

And it is to be observed that for every pound of the ancient value of a Knights fee accounting twenty pound land, the Tenant must goe with the King two dayes, which commeth in all to 40. dayes for a whole Knights fee by the Statute of Magna Carta it is provided that scutagium de ceter' capiatur sicut capi consueuit tempore Hen: regis aui nostri.

Sect.

Section 96.

¶ MEs il appiert p les plees & arguments faits en vn bon plee sur briefe de Detinue de vn escript obligatorie port per vn H: Gray T.7.E.3. que ne besoigne a celuy q̃ tient per Escuage de aler oue le Roy luy mesm̃, il boile trouer vn auter person able pur luy conuenablement array pur le guerre, de aler oue le Roy. Et ceo semble estre bon reason, car poit estre q̃ celuy que tient per tiels seruices est languishant, issint q̃ il ne poit aler ne chiuaucher. Et auxy vn Abbe, ou auter home de Religion, ou feme sole q̃ tient per tiels seruices, ne doit en tiel cas aler en proper person. Et Sir W. Herle adonque chiefe Justice d̃ common bank, disoit en tiel plee, que escuage ne serra graunt, mes lou le Roy alast luy mesme en son proper person. Et fuist demurre en iudgement en mesme le plee, le quelles xl. iours serront accompts de le primer iour del mu-

But it appeareth by the pleas and arguments made in a plea vpon a Writte of detinue of a writing obligatorie brought by one *H.Gray* 7. *E.*3. that it is not needfull for him which holdeth by Escuage to goe himselfe with the King if hee will finde another able person for him conueniently arrayed for the warre to goe with the King. And this seemeth to be good reason. For it may be that he which holdeth by such seruices is languishing, so as he can neither goe nor ride. And also an Abbot or other man of Religion, or a feme sole, which hold by such seruices ought not in such case to goe in proper person. And Sir *William Herle* then chiefe Iustice of the Common place said in this plea, that escuage shall not bee granted but where the King goes himselfe in his proper person. And it was demured in iudgement in the same plea, whither the 40. dayes should bee accounted from the first day of

¶ T.7.E.3. &c. This is the first book at large that our Author hath cited & it is to be obserued that this point is not debated in the said booke, but only it is there admitted, & yet is good authority in law, for our Author saith that it appeareth by this book, now both by Littleton himselfe, and by the booke of 7.E 3. it is apparant that albeit the tenure is that he which holdeth by a whole Knights fee ought to be with the King, &c. to doe a corporall seruice, yet he may finde another able man to doe it for him. T.7.E.3 *fol.*29.

By the statute of Magna Carta, cap.20. it is prouided, that no Knight that holdeth by Castle-gard shall bee distreyned to giue money for the keeping of the Castle, Si ipse eam facere voluerit in propria persona sua vel per alium probum hominem faciet si ipse eam facere non possit propter rationabilem causam.

Some haue thought that he that holds by escuage is taken by the equitie of this statute that speaketh only of Castle gard, but it is holden that this statute is but an affirmance of the Common law. For where that Act saith, (propter rationabilem causam) that reasonable cause is referred to the Tenants owne discretion and choyce, and the cause is not materiall or issuable no more then in the case that Littleton here putteth as hereafter appeareth. And I would aduise our student, that when hee shall be enabled and armed to set vpon the yeare bookes, or reports of Law, that hee bee furnished with all the whole course of the Lawe that when hee heareth a case vouched and applied either in Westminster Hall, (where it is necessary for him to bee a diligent hearer, and obseruer of cases of Law) or at readings or other exercises of learning, hee may finde out and reade the case so vouched, for that will both fasten it

it in his memory, and bee to him as good as an exposition of that case, but that must not hinder his timely and orderly reading which (all excuses set apart) he must bind himselfe vnto, for there be two things to be auoyded by him, as enemies to learning, præpostera lectio, and præpropera praxis. But let vs now heare what our Author will say.

ster de host le Roy, fait per les Commons, & per commãdement le Roy, ou de la iour que le Roy primes entra en Escoce: Ideo Quære de hoc.

the muster of the kings host made by the commons, & by the commandement of the King or from the day that the King first entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo semble bone reason, &c.* Here Littleton sheweth three reasons wherefore the Tenant should not be constrained to doe his seruice in person.

First, It may be the Tenant is sicke, so as he is neither able to goe nor ride. And euer such construction must be made in matters concerning the defence of the Realme or common good, as the same may be effected and performed. To the former disabilitie may be added where a Corporation aggregate of many, as Deane and Chapter, Maior and Comminaltie, &c. or an Infant being a Purchaser, for these also must finde an able man. But it may bee obiected that in these particular Cases the Tenant might find a man, but not when he himselfe is able without all excuse or impediment. To this it is answered, that Sapiens incipit à fine. And the end of this seruice is for defence of the Realme, and so it be done by an able and sufficient man, the end is effected.

Secondly, Seeing there are so many iust excuses of the Tenant it were dangerous, and tending to the hinderance of the seruice, if these excuses should bee issuable, Multa in iure communi contra rationem disputandi pro communi vtilitate introducta sunt.

Lastly, both Littleton and the Booke in the seuenth of Edward the Third, giueth the Tenant power, without any cause to be shewed to find an able and sufficient man, and oftentimes Iura publica ex priuato promiscue decidi non debent.

¶ *Vn Abbe ou auter home de religion.* Note that if the King had giuen Lands to an Abbot and his Successors to hold by Knights seruice, this had been good, and the Abbot should doe homage & find a man, &c. or pay Escuage, but there was no wardship or relefe or other incident belonging thereunto And though the Law saith that this was a Mortmayne, that is, that they held fast their Inheritances, yet if the Abbot with the assent of his Couent, had conueyed the land to a naturall man and his heires, now wardship and Relefe and other incidents belonged of common right to the tenure. And so it is, if the King giue Lands to a Maior and Comminaltie, and their Successors to be holden by Knights Seruice. In this case the Patentees (as hath beene said) shall doe no homage, neither shall there be any wardship or Relefe; only they also shall find a man, &c. or pay Escuage. But if they conuey ouer the lands to any naturall man and his heires, now Homage, ward, Mariage, and Relefe, and other incidents belong hereunto. And yet this possibilitie was remota potentia, but the reason hereof is, Cessante ratione legis cessat ipsa lex, the reason of the immunitie was in respect of the Bodie Politique, which by the conueyance ouer ceaseth, which is worthy of obseruation.

And it is to bee obserued, that euery Bishop in England hath a Baronie, and that Baronie is holden of the King in Capite, and yet the King can neither haue wardship nor Relefe.

If two ioyntenants bee of Land holden by Knights Seruice, if one goeth with the King, it sufficeth for both, and both of them cannot be compelled to goe, for by their tenure one man is only to goe.

6. H. 3. Mowry 242. F. N. B. 83. 84.

If the Tenant perauaile goeth, it dischargeth the Peine, for one Tenancie shall pay but one Escuage.

¶ *Ou auter home de Religion.* Here this word (Religion) is taken largely, viz. not only for regular, or dead persons, as Abbots, Monkes, or the like. But for Secular persons also, as Bishops, Parsons, Vicars, and the like, for neither of them are bound to goe in proper person. For nemo militans Deo implicet secularibus negotiis.

¶ *Languishant.* So it may be said of an Ideot, a mad Man, a Leaper, a man maymed, Blind, Deafe, of decrepit age, or the like.

¶ *Ou fem sole.* Seeing that a fem sole, that cannot performe Knights Seruice may serue by deputie, it may bee demanded wherefore an heire male being within

within age of 21. yeares may not serue also by Deputie, being not able to serue himselfe.

To this it is answered, that in cases of Minoritie, all is one to both sexes, viz. if the heire male be at the death of the Ancestor vnder the age of one and twentie, or the heire female vnder the age of fourteene, they can make no Deputie but the Lord shall haue Wardship as an incident to the tenure: therefore Littleton is here to be vnderstood of a femsole of full age, and seised of Land holden by Knights Seruice either by purchase or discent.

¶ *Couenablement arraie pur le guerre.* So as here are foure things to be obserued.

First (as hath beene said) that he may find another.

Secondly, That he that is found must be an able person.

Thirdly, he must be armed at the costs and charge of the Tenant; and herein is to be noted, Quod non definitur in iure, with what manner of Armor the Souldier shall be arrayed with for time, place, and occasion doe alter the manner and kind of the Armour.

Fourthly, he must haue such Armour, as shall be necessarie, and so appointed in readinesse.

Ferdwit is a Saxon word & significat quietanciam murdri in exercitu. Worscott is an old English word and signifieth, Liberum esse de oneribus armorum. *Fleta. lib. 1. cap. 42.*

It is truly said, Quod miles hæc tria curare debet, corpus vt validissimum & pernicissimum, habeat arma apta ad subita imperia, cætera Deo, & Imperatori Curæ esse. *Linius.*

Sapiens non semper it vno gradu, sed vna via, non se mutat sed aptat. Qui secundos optat euentus, diuinet arte, non casu. In omni conflictu non tam prodest multitudo quam virtus. *Vegetius.*

Est optimi ducis scire & vincere, & cedere prudenter tempori. Multum potest in rebus humanis occasio, plurimum in bellicis. *Polibius.*

Quid tam necessarium est quam tenere semper arma quibus tectus esse possis. But I will take my leaue of these excellent Authors of Art Militarie, and referre them to those that profesle the same, and will returne to Littleton. *Virgin.*

¶ *Muster.* I find this word in the Statute of 18. H. 6. cap. 19. and the ancient Militarie Order is worthy of obseruation, for before and long after that Statute, when the King was to be serued with Souldiers for his warre. A Knight or Esquire of the Countrie, that had Reuenues, Farmors and Tenants would couenant with the King by Indenture inrolled in the Exchequer to serue the King for such a terme with so many men (specially named in a List) in his warres, &c. an excellent institution that they should serue vnder him, whom they knew and honored, and with whom they must liue at their returne, these men being mustered before the Kings Commissioners, and receiuing any part of their wages, and their names so recorded, if they after departed from their Captaine within the Terme, contrarie to the forme of that Statute it was felonie. But now that Statute is of no force, because that ancient and excellent forme of militarie course is altogether antiquated: but later Statutes haue prouided for that mischiefe. *Lib. 6. fol. 29. the Souldiers Case.*

To muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field. Vbi se ostendentes præludunt prælio. In Latine it is Censere, seu lustrare exercitum.

By the Law before the conquest that musters and shewing of Armour should be Vno eodem die per vniuersum regnum ne aliqui possint arma familiaribus & notis accommodare, nec ipsi illa mutuo accipere, ac iustitiam Domini Regis defraudare, & Dominum Regem & Regnum offendere. *Lamb. fol. 135. b.*

Concerning the point in Law, demurred in iudgement, in the seuenth of Edward the third, here mentioned by our Author, The Law accounteth the beginning of the forrie dayes after the King entreth into the forreine Nation, for then the warre beginneth, and till he come there, he and his hoste are said to goe towards the warre, and no Militarie seruice is to be done, till the King and his hoste come thither.

¶ *Sir William Herle.* A famous Lawyer constituted chiefe Justice of the Common Pleas by Letters Patents dated, 2. die Martij anno 5. E. 3. It appeareth by Littleton, and by the Record that he was a Knight against the conceit of those, that thinke, that the Chiefe Justices of the Court of Common Pleas were not Knighted till long after.

Our Student shall obserue that the knowledge of the Law is like a deepe Well, out of which each man draweth according to the strength of his vnderstanding. He that reacheth deepest, he seeth the amiable, and admirable secrets of the Law, wherein, I assure you, the Sages of the Law in former times, (whereof Sir William Herle was a principall one) haue had the deepest reach. And as the Bucket in the depth is easily drawne to the vppermost part of the water, (for Nullum elementum in suo proprio loco est graue) but take it from the water, it cannot bee drawne vp but with great difficultie. So albeit beginnings of this studie seeme difficult, yet when the Professor of the Law can diue into the depth it is delightfull, easie, and without any heauie burthen, so long as he keepe himselfe in his owne proper element.

Glanvile lib.2.cap.6.&c.

¶ *Iustice.* In Glanuill he is called Iustitia in ipso abstracto, as it were Iustice it selfe, which appellation remaines still in English and French, to put them in mind of their duties and functions. But now in legall Latine they are called Iusticiarij tanquam iusti in Concreto: and they are called Iusticiarij de Banco, &c. and neuer Iudices de Banco, &c.

¶ *De Comon Banke.* *Banke* is a Saxon word, and signifieth a Bench or high seate, or a tribunall, and is properly applyed to the Iustices of the Court of Common Pleas, because the Iustices of that Court set there as in a certaine place: for all writs returnable into that Court are Coram Iusticiarijs nostris apud Westmon. or any other certaine place where the Court set, and Legall Records tearme them Iusticiarij de Banco. But writs returnable into the Court called the Kings Bench, are Coram nobis (.i. Rege) vbicunque fuerimus in Anglia. And all iudiciall Records there are stiled coram Rege. But for distinction sake it is called the Kings Bench, both because the Records of that Court are stiled (as hath beene said) Coram Rege, and because Kings in former times haue often personally set there. For the antiquitie of the Court of Common Pleas they erre, that hold that before the Statute of Magna Charta there was no Court of Common Pleas, but had his Creation by, or after that Charter: for the learned know, that in the fire and twentieth yeare of Edward the Third. The Abbot of B. in a writ of Assize brought before the Iustices in Eire claymed Conusance and to haue writs of Assize, and other originall writs out of the Kings Court by prescription, time out of mind of man, in the raignes of Saint Edmond, and Saint Edward the Confessor before the Conquest. And on the behalfe of the Abbot were shewed diuers allowances thereof in former times in the Kings Courts, and that King Henrie the first confirmed their wages, and that they should haue Conusance of Pleas, so that the Iustices of the one Bench, or the other should not intermeddle. And the Statute of Magna Charta, erecteth no Court, but giueth direction for the proper iurisdiction thereof in these words. Communia Placita non sequantur Curiam nostram, sed teneantur in aliquo certo loco. And properly the Statute saith, non sequantur, for that the Kings Bench did in those dayes follow the King vbicunque fuerit in Anglia, and therefore enacteth that Common Pleas should be holden in a Court resident in a certaine place. In the next Chapter of Magna Charta (made at one and the same time) it is prouided. Et ea quæ per eosdem (s. Iusticiarios itinerantes) propter difficultatem aliquorum articulorum terminari non possunt, referantur ad Iusticiarios nostros de Banco, & ibi terminentur. And in the next to that (Assisæ de vltima præsentatione semper capiantur coram Iusticiarijs de Banco, & ibi terminentur. Therefore it manifestly appeareth that at the making of the Statute of Magna Charta, there were Iusticiarij de Banco, which all men confesse to be the Court of Common Pleas. And therefore that Court was not erected by or after that Statute. For the Authoritie of this Court, it is euident by that which hath beene said, that it hath iurisdiction of all Common Pleas. But let vs returne to Littleton.

26.Ass.p.24. 4.E.3.fol.19. Bracton.lib.3.fol.105.b. Brit.fol.1.& 2. Fleta lib.2.cap.2. Mirror.cap.5.§.1. Fortescue cap.51. See in the Preface to the third part of my Reports.

Mirror.cap.5.§.2. Fleta.lib.2.cap.54.

¶ *Demurre en iudgement.* A Demurrer commeth of the Latine word demorari to abide, and therefore he which demurreth in Law, is said, he that abideth in Law, Moratur, or demoratur in lege. Whensoeuer the Councell learned of the partie is of opinion, that the Count or Plea, of the aduerse partie is insufficient in Law, then he demurreth or abideth in Law, and referreth the same to the iudgement of the Court, and therefore well saith Littleton, here demurre en iudgement, the words of a Demurrer being Quia narratio, &c. materiaque in eadem contenta minus sufficiens in lege existit, &c. and so of a Plea, Quia Placitum, &c. materiaque in eodem content minus sufficiens in lege existit, &c. vnde pro defectu, sufficientis narrationis siue placiti &c. petit iudicium, &c. But if the Plea be sufficient in Law, but the matter of fact is false, then the aduerse partie taketh issue thereupon, and that is tried by a Iury, for matters in Law are decided by the Iudges, and matters in fact by Iuries, as elsewhere is said more at large.

Now as there is no issue vpon the fact, but when it is ioyned betweene the parties, so there is no Demurrer in Law, but when it is ioyned, and therfore when a Demurrer is offered by the one partie as is aforesaid, the aduerse partie ioyneth with him, (for example) saith, Quod Placitum prædictum &c. materiaque in eodem contenta bonum & sufficiens in lege existunt, &c. & petit iudicium, and thereupon the Demurrer is said to be ioyned, and then the Case is argued by Councell learned of both sides, and if the points bee difficult, then it is argued openly by the Iudges of that Court, and if they or the greater part concurre in opinion, accordingly iudgement is giuen, and if the Court bee equally deuided, or conceiue great doubt of the case, then may they adiorne it into the Exchequer Chamber, where the case shall be argued by all the Iudges of England, where if the Iudges shall bee equally diuided, then (if none of them change their opinion) it shall bee decided at the next Parliament by a Prelate, two Earles, and two Barons which shall haue power and Commission of the King in that behalfe, and by aduice of themselues, the Chancellor, Treasurer, the Iustices of the

Vid. Bract. lib.5.fol.352.b.

14.E.3.cap.5. Statut.1.

the ons Bench and the other, and other of the Kings Counſell, as many and ſuch as ſhall ſeeme conuenient, ſhall make a good iudgement, &c. And if the difficultie be ſo great as they cannot determine it, then it ſhall be determined by the Lords in the vpper houſe of Parliament. See the ſtatute, for it extends not only to the caſe aboueſaid, but alſo where iudgements are delayed in the Chancery, Kings bench, Common bench, and the Exchequer, the Iuſtices aſſigned, and other Iuſtices of Oyer and Terminer, ſometimes by difficultie, ſometime by diuers opintons of Iuſtices, and ſometime for other cauſes. (a) Before which Statute, if iudgements were not giuen by reaſon of difficultie, the doubt was decided at the next Parliament (which then was to be holden once euery yeare at the leaſt) (b) Si autem talia nunquam prius euenerint, & obſcurum & difficile fit eorum judicium, tunc ponatur judicium in reſpectum vſque ad magnam curiam vt ibi per conciliũ curiæ terminentur. But hereof thus much ſhall ſuffice. (c) He that demurreth in Law confeſſeth all ſuch matters of fact as are well and ſufficiently pleaded. If there be a demurrer for part and an iſſue for part, the more orderly courſe is to giue iudgement vpon the demurrer firſt, but yet it is in the diſcretion of the Court to trie the iſſue firſt if they will. After demurrer ioyned in any Court of record, the iudges ſhall giue iudgement according as the very right of the cauſe and matter in Law ſhall appeare, without regarding any want of forme in any Writ, Returne, Pleint, Declaration, or other pleading, Proces, or courſe of proceeding, except thoſe only which the partie demurring ſhall ſpecially and particularly ſet downe and expreſſe in his demurrer. (d) Now what is ſubſtance and what is forme you ſhall reade in my Reports.

And in ſome caſes a man ſhall alledge ſpeciall matter, and conclude with a Demurrer, (b) as in an action of treſpaſſe brought by I.S. for the taking of his horſe, the defendant pleades that he himſelfe was poſſeſſed of the horſe vntill he was by one I.S. diſpoſſeſſed, who gaue him to the plaintife, &c. the plaintife ſaith that I.S. named in the barre, and I.S. the plaintife were all one perſon & not diuers; and to the plea pleaded by the defendant in the manner, he demurred in Law, and the Court did hold the plea and demurrer good, for without the matter alledged hee could not demurre. Now as there may be a demurrer vpon counts and pleas, ſo there may be of Ide prior, Voucher, Receite, Waging of Law, and the like. (c) By that which hath beene ſaid it appeareth, that there is a generall demurrer that is ſhewing no cauſe, and a ſpeciall demurrer which ſheweth the cauſe of his demurrer. Alſo by that which hath beene ſaid, there is a demurrer vpon pleading, &c. and there is alſo a demurrer vpon euidence. (d) As if the plaintife in euidence ſhew any matter of Record, or Deeds or writings, or any ſentence in the Eccleſiaſticall Court, or other matter of euidence by teſtimony of witneſſes, or otherwiſe whereupon doubt in Law ariſeth, and the defendant offer to demurre in Law therevpon, the plaintife cannot refuſe to ioyne in demurrer, no more then in a demurrer vpon a Count, replication, &c and ſo E converſo may the plaintife demurre in Law vpon the euidence of the defendant.

But if euidence for the King in an Information or any other ſuite be giuen, and the Defendant offer to demurre in Law vpon the Euidence, the Kings counſell ſhall not be enforced to ioyne in Demurrer: but in that caſe, the Court may direct the Iury to finde the ſpeciall matter.

Rot Parliam. 14.E.3.nu 21. a proceeding in Sir I.h Stantons Caſe vpon difficultie in the Court of Comm n Pleas. Vid Britton, fo. 41.
21 E.3.37.38.
39 E.3.fo.1.21.35.
40.E.3.34. 13.H.4.3.4.
(a) 4.E.3.ca.14.
(b) Bracton lib.1.cap.2. nu.7. Britt.fo.41.
1.E.3.7.8. 2.E.3.6.7.

(c) 17.E.3.50.b. 47.E.3.13.14 5.H.7.1. 13.E.4.7.b. Pl.Com.85. 411.172. 48.E.3.15. 2.R.2. monaſt.2. 38.E.3.25. 1.H.4 5.7 3. 3.E.4.2.

(d) Lib.3.fo.57. Lane.Coll. caſe. Lib.5.fo.74. Wymeks caſe. Lib.10.fo.88. vſque 98. Lord Leyfields caſe. (b) 13.E.4.7. 31.E 3. eſtoppel.244. 33 H.6.9.10. 22.E.4.50. 1.H.7.21.

(e) 14 H.4.31.37.H.6.6.

(d) Lib.5.fo.104.a Baker's caſe.

(e) 38.H.8.Dyer 53.

C En iudgement. For the ſignification of this word, Vid. Sect. 366

Sect. 97.

CEt apres tiel voyage royal en Eſcoce, il eſt communement dit, que p authoritie de Parliament leſcuage ſerra aſſeſſe & mis en certaine, ſ. certeine ſume dargent, quant cheſcun que tient per entier fee de ſeruice de chiualer, q̃l ne fuit

AND after ſuch a voyage royall into Scotland, it is commonly ſaid, that by authority of Parliament, the eſcuage ſhall be aſſeſſed and put in certeine, s. a certaine ſumme of money; how much euery one which holdeth by a whole Knights fee,

CAPres voiage royal, &c. il eſt communement dit que per Authority de Parliament eſcuage ſerra aſſeſſe. Nota here is a ſecret of Law included, that albeit eſcuage incertaine be due by tenure, yet becauſe the aſſeſſment thereof concerned ſo many and ſo great a number of the ſubiects of the realme, it could not be aſſeſſed by the King or any other but by Parliament:

(a) and

(a) 13.H.4.5.

(b) 8.H.3. Rot. Claus. & Rot. finium memb 30. & ante.

(a) and this was by the common Law.

(b) No Escuage was assessed by Parliament since the raigne of Edward the second, and in the eighth yeare of his raigne Escuage was assessed.

Stat. p.14.E.1. de Banco.

If the Tenant goeth with the King and dieth in exercitu, in the host or armie, hee is excused by Law, and no Escuage shall be demanded.

F.N.B.84.

And it is to obserued, that if he that hold of the King by Escuage, goeth, or findeth another to goe for him with the King, &c. then hee shall haue escuage of his Tenants that hold of him by such seruice. which must be assessed by parliament.

Bract. lib.2.36.a.

But if the Kings Tenant goeth not with the King, then he shal pay for his default Escuage, and shall haue no escuage of his Tenants. Richard the second making a voyage Royall into Scotland, at the petition of his Commons pardoned the payment of Escuage.

F.N.B.84.

Rot. Pail. 9.R.2.nu.40.

per luy mesme, ne per vn auter pur luy, oue le Roy paiera a son Seignior de que il tient la Terr per escuage. Sicome mittomus, que il fuit ordaine per authoritie de la Parliament, que chescun que tiēt per entire fee d Seruice de chiualer, que ne fuit oue le Roy, payera a son Seignior 40. s. donque celuy que tient per moitie dun fee de chiualer ne payera a son seignior forsqz xx. s. & celuy que tient p la quart part de fee de chiualer ne payera forsque x. s. & sic que pluis, pluis, & que meins, meins.

who was neither by himselfe nor by any other, with the King, shall pay to his Lord of whom he holds his land by Escuage. As put the case that it was ordained by the authoritie of the Parliament, That euery one which holdeth by a whole Knights fee, who was not with the King, shall pay to his Lord fortie shillings; then he which holdeth by the moitie of a Knights fee, shall pay to his Lord but twentie shillings, and hee which holdeth by the fourth part of a knights Fee, shall pay but x. s. & he which hath more more, and which lesse, lesse.

Sect. 98.

Vide Sect.130.

¶ *Ascuns teignont per custome, &c.* Nota, that Escuage is directed by customs.

¶ *Mes auterment est de Escuage certain.*

15.E.2.Tit.Auow.215. 26.Ass.65. 30.E.3.23.b. Lib.4.fo.88.in Lastrels case.

Here it appeareth, that Escuage is two fold, viz Escuage incertaine, wherof Littleton here speaketh; and escuage certaine, Quemadmodum incertitudo scutagij facit seruitium militare, ita certitudo scu-

¶ Ascuns teignont per la custome que si lescuage courge per authoritie de Parliament, a ascun summe de money, que ils ne paieront forsque la moitie de ceo, & ascuns teignont que ils ne payeront forsque le quart part de ceo. Mes pur ceo que lescuage que ils paieront est non certain pur ceo que nest certaine coment le Parliament

And some hold by the custome, That if Escuage bee assessed by authoritie of Parliament, at any summe of mony, that they shal pay but the moitie of that summe, and some but the fourth part of that summe. But because the Escuage that they should pay is vncertaine, for that it is not certaine how the Parliament will assesse the escuage they hold by Knights ser-

assessera

assessera lescuage eux teignont per Seruice de Chiualer. Mes autrement est de lescuage certaine, de que serra parle en le tenure de Socage.

uice. But otherwise it is of Escuage certaine, of which shall be spoken in the tenure of Socage.

tagij facit Socagium. But more of this in the Chapter of Socage Sect.120.

¶ *Per Parliament.*

Of the Antiquitie and Authoritie of this Court see Sect.164.

Sect. 99.

¶ ET si hõe parle generalment descuage, il serra entendue per l'common parlance descuage noncertaine, que est Seruice de chiualer, & tiel escuage trait a luy homage, & homage trait a luy Fealtie, car fealtie est incident a chescun manner de seruice forsque a le Tenure en Frankalmoigne, come serra dit apres en le Tenure de Frankalmoigne. Et issint il que tient per Escuage, tient p homage fealtie & Escuage.

AND if one speake generally of Escuage, it shall be intended by the common speech of Escuage incertaine, which is Knights seruice: And such Escuage draweth to it Homage, and Homage draweth to it fealtie; for Fealtie is incident to euerie manner of seruice, vnlesse it be to the Tenure in Frankalmoigne, as shall bee said afterward in the Tenure of Frankealmoigne. And so he which holdeth by Escuage, holds by Homage, Fealtie and Escuage.

¶ *ET si home parle generalment descuage il serra intend per le common parlance descuage non certain.*

Verba æquiuoca & in dubio posita intelliguntur in digniori & potentiori sensu. Tenure in Capite ex vi termini is a Tenure in Grosse, and it may be holden of a Subiect, but being spoken generally, it is secundum excellentiam, intended of the King, for he is Caput Reipublicæ.

Entendment en Ley Sect.100. 110.367.377,393.406.462. 463. 5.E.2.Ref.165.20.H.6.23. 21.H.6.8.37.H. 29. 13.H.4.4.6.El.Dyer 236. 10.E.4.11.32.E.3. Gard. 31

Brit.fo.163.

¶ *Et tiel escuage trait a luy homage, & homage trait a luy Fealtie, car Fealtie est incident a chescun manner de seruice forsque a tenure en Frankealmoigne.*

40.E.3.22. 8.H.7.4.

Sect.100.

This is gathered by the effects of their Tenure, for essences are found out by properties, fountains by Riuers, and causes by effects: for amongst others, the Lords shal haue Escuage. Of their Tenants, &c. as it followeth.

¶ ET est ascauoire, Que quant escuage est tielment assesse per authority de Parliament chescun Seignior de que la terre est tenus per Escuage, auera lescuage issint assesse per Parliament pur ceo que il est in-

AND it is to be vnderstood, that when Escuage is so assessed by authoritie of Parliament, euerie Lord of whom the land is holden by Escuage, shall haue the Escuage so assessed by Parliament, because it is intended by the Law, That at

T tendus

tendus p la ley, q̃ al cõmencemẽt tiels tenemẽts fuer dones p les Sũrs a lez tenãts de tener per tielz seruices a defender lour Sũrs, auxy bien come le Roy, & mitter en quiet lour Sũrs & le Roy, de les Scotes auandits.

the beginning such tenements were by the Lords to the tenants to hold by such seruices to defend their Lords aswell as the King, and to put in quiet their Lords and the King from the Scots aforesaid.

Sect. 101.

F.N.B.84. Register.88. de Scutagio habendo.

¶ *Les seigniours auerront lescuage, &c.* This is euident.

¶ *Breife le roy.* This commeth of the Latyne word Breue.

Fitz. in his Preface to his N.B. saith of them, that they be those foundations whereupon the whole Law doth depend.

(a) Bracton describeth a writ thus, Breve quidem cum sit formatum ad similitudinem regulæ juris quia breuiter & paucis verbis intentionem proferentis exponit & explanat sicut regula iuris rem que est breviter enarrat, non tamen ita breve esse debeat quin rationem & vim intentionis contineat.

(a) Bracton lib. 5. fol. 413. Fleta lib. 2. cap. 12. Britton. fol. 122, 227.

Of writs some be originall, brevia originalia, and some be iudiciall, brevia judicialia.

Also of Originals, quædam sunt formata sub suis casibus & de cursu, & de communi consilio totius regni concessa & approbata, que quidem nullatenus mutari poterint absque concensu & voluntate eorum; & quædam sunt Magistralia, & sæpe variantur secundum varietatem casuum factorum & querelarum, as for example actions vpon the case which varie according to the varietie of euery mans case and the like, and these being not of course, the masters being learned men did make: Item breuium originalium alia sunt realia, alia personalia, alia mixta. Item breuium originalium, alia sunt patentia siue aperta, & alia clausa. Certaine it is that the originall writs are so artificially and briefely compiled, as there is nothing redundant or wanting in them, of which an honourable Secretary of state once said, that it was not possible to comprehend so much matter, so perspicuously in fewer words: of all these kinde of writs you shall reade plentifully in the Register whereof Littleton maketh mention in this place, and also in Fitz N.B.

Bracton vbi supra. Britton vb. supra. Regist. 88. F.N.B. 84.

¶ *Sicome appiert per le Register.* Register, is the name of a most ancient booke and of great authority in Law, containing all the originall writts of the Common Law, of which booke see more in the Preface to the ninth part of my Reports, & containeth alle Breuia iudicialia quæ sepius variantur secundũ varietatẽ placitorũ proponentis & respondentis.

F.N.B. 84.

Also it appeareth by the Register that the King shall haue escuage of his tenants which hold of him as of a Manor which he hath in ward, or by reason of a vacation of a Bishoprick.

And so shall a common person, if he hath an estate for life or for yeares of a Seignior.

¶ Et pur ceo que tiels tenemẽts deuiendront primes des seignioꝛs, il est reason q̃ ils aueront lescuage de lour tenants. Et les Seignioꝛs ẽ tiel case purront distreiñ pur lescuage issint assesse, ou ils en ascuns cases purront aũ brẽ le roy, direct as Vicõts de m̃ les Counties, &c. de leuier tiel escuage pur eux, sicome appiert p le Register. Mes ỏ tiels tenants queux teignont per escuage de Roy, q̃ux ne fueront oue le roy en Escoce, le Roy meisme auera lescuage.

And because such tenements came first from the Lords, it is reason that they should haue the Escuage of their tenants. And the Lords in such case may distreine for the escuage so assessed, or they in some cases may haue the kings Writts directed to the Sheriffs of the same Counties, &c. to leuie such escuage for them, as it appeareth by the Register. But of such tenants as hold of the King by escuage which were not with the King in Scotland, the King himselfe shal haue the escuage.

Section 102.

¶ Item en tiel case auandit, lou le Roy face vn voyage royall en Escoce, & lescuage est assesse per Parliament, si le sñr distreine son tenant que tient de luy per seruice dentier fee de chiualer pur lescuage issint assesse, &c. & le tenãt plede, & voit auerrer que il fuit oue le Roy en Escoce &c. per xl. iours, & le Seignior voit auerrer le contrarie, il est dit, que il serra trie per le certificat del Marshal del host le Roy en escript south s̃ seale q̃ serra mis a les Justices.

Item, in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole Knights fee, for the Escuage so assessed, &c. and the tenant pleadeth and will auer that he was with the King in Scotland, &c. by 40. daies, and the Lord will auerre the contrary, it is said that it shall bee tried by the certificat of the Marshall of the kings host in writing vnder his seale, which shall be sent to the Iustices.

¶ *Et voet averre, que il fuit ove le roy en Escoce per 40. iours, &c.* (a) *il est dit que il serra trie per le certificat del Marshall.* This is a triall appointed by the Law, Ne curia regis deficeret in Iusticia exhibenda. (b) Herewith agreeth the Register, where the Marshall is is called Constabularius exercitus nostri.

(a) 2.E.4.11. 4.E.4.10. 21.E.4.10. F.N.B.85. 11.H.7.5. Lib.9.fo.32. Case de Sivat. Mare:

(b) Regist.88. F.N.B.84. 2.E.4.1.4.E.4.10. 9 H.4.3. 11.H.7.5. 21.H.6.50. 33.H.6.1.45.

¶ *Marshall de hoste le roy.* Mareschallus exercitus, in Saxon Marischalk. .i. equitum magister. This word Marshall is either derived of Mars or of Marc an horse and schalc which signifieth in the Saxon tongue, a Master or Gouernour. (c) In the Lawes before the Conquest it is said. Mareschalli exercitus, seu ductores exercitus Heretoches per Anglos vocabantur, illi ordinabant acies densissimas in prælijs & alas constituebant prout decuit, & prout ei melius visum fuerit ad honorem coronæ & ad vtilitatem regni.

(c) Lamb.fo.136.

(d) And here it is to be observed, that his Certificate in this case is a triall in Law. I read of sixe kindes of Certificates allowed for trialls by the Common Law; the First whereof Littleton here speaketh of, in time of warre out of the Realme, 2. In time of peace out of the Realme: (e) As if it be alledged in auoydance of an Outlawrie, that the defendant was in prison at Burdeaux in the seruice of the Maior of Burdeaux, it shall bee tried by the Certificate of the Major of Burdeaux. 3. For matters within the Realme, (f) the Custome of London shall be certified by the Maior & Aldermen by the mouth of the Recorder. 4. By certificate of the Sherife vpon a Writ to him directed (g) in case of priuiledge if one be a Citizen or a Forreiner. 5. Triall of Records by certificate of the Iudges in whose custody they are by Law. All these be in temporall causes. 6. In causes Ecclesiasticall, as loyaltie of marriage, generall bastardie, excommengement, prohibition. These and the like are regularly to be tried by the Certificate of the ordinaris.

(d) 2.E.4.1.b.4 E.4.10. 23.E.4.47. F.N.B.85.

(e) 4.E.4.10.

(f) 5.E.4.30. 21.E.4.16.

(g) 10.H.6.10.

And there be diuers other trialls allowed by the Common Law, then by a Jury of 12. men which you may reade at large in the ninth booke of my Reports, fo.30.31.&c. in the case of the Abbot of Strata Marcella, which are as plainely set downe there, as they can be here: and in this case, if the triall should not be by Certificate, it should want triall which should be inconuenient; Only in this place I will adde something of a forreine triall which I finde not in any of the Treatises lately published against single combats, because it may deterre men from that vngodly and vnlawfull kinde of reuenge, whereupon many murders haue ensued, and preuent all hope of impunitie for default of triall in that case.

If a subiect of the King be killed by another of his subiects out of England in any forreine Countrey, the wife or he that is heire of the dead may haue an appeale for this murder or homicide before the Constable and the Marshall, whose sentence is vpon testimony of witnesses or combate. And accordingly where a subiect of the King was slaine in Scotland by others of

Stat. de 1.H.4.cap.14. 13.H.4.fo.5. Vid. Rot. Parliam. 8.H.6. nu.38. Staunf.pl.Cor.fo.65.

the Kings subiects, the wife of the dead had her appeale therefore before the Constable and the Marshall. And so it was (*) resolued in the Raigne of Queene Elizabeth in the case of Sir Francis Drake who stroke off the head of Dowtie, in partibus transmarinis, that his brother and heire might haue an Appeale, Sed Regina noluit constituere Constabularium Angliæ, &c. & ideo dormiuit appellum.

(*) Anno 25. Eliz.

If a man be mortally wounded in France, and dieth thereof in England, it is said that an Appeale doth lie vpon the said statute, for it is not punishable by the Common Law, and the proceeding there (as hath beene said) is vpon witnesses or combate, and not by Iurie, and the mortall wound was giuen out of the Realme.

CHAP. 4. Sect. 103.

Knights Seruice.

(a) Glanuil. lib. 7. cap. 10.
(b) Regist. 2. 30. E 3. 34.

(c) Glanuil. lib. 7. cap. 14.

(d) Glanuil. lib. 7. cap. 9. & c. Fleta. lib. 1. cap. 8. Bract. lib. 2. fol. 85. Britton. fol. 162. & fol. 28. & 93. Occurrit in diuersis locis. Mirror cap. 1. §. 3. Sudley Diuers.

(e) Bracton. lib. 2. fol. 36. 37. Britton. fol. 164, 165. Fleta lib. 3. cap. 14. 19. E. 2. auowrie 224. 26. Ass. 65. 31. Ass 30. 30. E. 3. 23. 8. E. 3. 67. 7. H. 4. 19.

SEruice de Chiualer. Nota, it appeareth by (a) the Regiſter, that it is (b) ſaid vnum fœdum militis, and not fœdum vnius militis, as it was ſaid (c) by ſome of old, and ſo duo fœda militis, &c. and ſometime theſe fees are called fœda militaria. Our Authour hauing before treated of Homage, Fealtie and Eſcuage, now commeth, to Knight Seruice it ſelfe. In Domeſday, it is thus recorded Epiſcopus Baiocenſis ille qui tenet de Modardoreddit ei 50. s. & ſeruitium vnius militis.

CHiualer .i. eques, Knight is a Saxon word, and by them written, Cnite. Chiualer taketh his name from the horſe, becauſe they alwayes ſerued in warres on horſeback. The Latines called them Equites, the Spaniards, Caualleroes, the Frenchmen, Chiualiers, the Italians Cauallieri, and the Germanes Reiters, all from the horſe. It is neceſſary to bee ſeene by what names this ſeruice of a Knight is called. It is called (e) Seruitium forniſecum quia pertinet ad Dominum Regem & non ad capitalem Dominum niſi cum in propria perſona profectus fuerit in ſeruitio, & niſi cum pro ſeruitio ſuo, ſatisfecerit Domino Regi, &c. ideo forniſecum dici poteſt, quia fit & capitur foris ſiue extra ſeruitium quod fit

CTenure p homage, fealtie, & eſcuage, eſt a tener per ſeruice de chiualer, & trait a luy garde, mariage, & reliefe. Car quant tiel tenant mozuſt, & ſon heire male eſt deins lage de 21. ans, le ſeignioz auia la terre tenus de luy tanque al age del heire de 21. ans, le quel eſt appell pleine age, pur ceo que tiel home per entendement del ley neſt pas able de faire tiel ſeruice de chiualer, deuant lage de 21. ans: Et auxy ſi tiel heire ne ſoit marie al tẽps de mozt de tiel aunceſter, donque le ſeignioz auera le garde & le mariage de luy. Mes ſi tiel tenant deuie, ſon heire female eſteant dage de 14. ans, ou de plus, donque le Seignioz

TEnure by homage, fealtie and eſcuage is to hold by Knights Seruice, and it draweth to it Ward, Mariage, and reliefe. For when ſuch tenant dieth, and his heire male bee within the age of 21. yeares, the Lord ſhall haue the land holden of him vntill the age of the heire of 21. yeares, the which is called full age, becauſe ſuch heire by intendement of the Law is not able to doe ſuch Knights Seruice before his age of 21. yeares. And alſo if ſuch heire be not married at the time of the death of his Anceſtor, then the Lord ſhall haue the Wardſhip & mariage of him, but if ſuch Tenant dieth, his heire female being of the age of 14. yeares, or more, then the Lord ſhall not haue the ma-

nauera my le garde del terre ne de corps pur ceo que feme de tiel age poit auer baron able de faire seruice de chiuler. Mes si tiel heire female soit deins lage de 14. ans, & nient marie al temps de la mort son auncester, donque le Seignior auera le garde de la terre tenus de luy, tanque al age de tiel heire female de 16. ans, pur ceo que il est done per le Statute de Westm. 1. cap. 22. Que per 2. ans procheine ensuant les dits 14. ans, le seignior poit tender conuenable mariage sãs disparagement a tiel heire female. Et si le Seignior deins les dits 2. ans ne luy tend tiel mariage, &c. donque el al fine des dits 2. ans, poit enter & ouste son Seignior. Mes si tiel hẽ female soy marie deins lage de 14. ans en la vie sõ ancester, & son auncester deuy el esteant deins lage de 14. ans, le Seignior nauera forsq; la garde de la terre, jesques a fine de 14. ans, dage de tiel heire female, & donq; Wardship of the land, nor of the bodie, because that a woman of such age may haue a husband able to doe Knights Seruice, but if such heire female bee within the age of 14. yeares, and vnmaried at the time of the death of her ancestors, the Lord shal haue the Wardship of the Land holden of him vntill the age of such heire female of 16. yeares. For it is giuen by the Statute of W. 1. cap. 22. that by the space of two yeares next ensuing the said 14. yeares, the Lord may tẽder conuenable mariage without disparagement to such heire female. And if the Lord within the said two yeares do not tender such mariage, &c. then shee at the end of the said two yeres may enter, and put out her Lord; but if such heire female bee maried within the age of 14. yeres in the life of her Ancester, & her Ancester dieth, shee beeing within the age of 14. yeares, the Lord shall haue only the Wardship of the Land vntill the end of the 14. yeares of age of such

Domino capitali. And it is called Scutagium, as it appeareth (f) by Littleton and many authorities before recited. Sometime droit de espee. Also it is called (g) Regale seruitium, quia specialiter pertinet ad Dominum Regem. Vt si dicatur in Carta, faciendo inde fornisecum seruitium, vel Regale seruitium, vel seruitium Domini Regis quod idem est, &c. And another saith. Et sunt quædam seruitia fornisecа quæ dici poterunt Regalia quæ ad scutum præstantur, & inde habemus Scutagium, & ratione scuti pro fœdo militari reputatur, &c. So as in respect of him that doth it, it is called seruitium militis, but in respect of him for & to whom it is done, viz. to the King, & for the Realme it is called seruitium Regale, or seruitium Domini Regis, &c. (h) In ancient time they which held by Knights Seruice were called Milites, qui per loricas, &c. defendunt & deseruiunt, &c. and sometime this seruice is called seruitium hauberticum. And in ancient time such as held by Knights seruice for the defence of the Realme had many Priuiledges granted to them by Law: as for example they might haue a writ De essend' quiet' de tallagio, the effect whereof was (i) Si Th. filius Ranulphi terram suam teneat per seruitium militare, sicut Domino Regi monstrauit, tunc nullum ab eodem Thoma capiant tallagium nec pro eo dando ipsum distringant, vel homines suos qui per consimile seruitium teneant. And this agreeth with the ancient Charter of King Henrie the first, before mentioned, which he made on the day of his Coronation for the restitution of the Ancient Lawes. (k) Militibus qui p̃ loricas terras suas defendunt & deseruiunt terras Dominicarum carucar' suarum quietas ab omnibus gildis, & omni opere &c concedo.) and the reason thereof is there yelded, Sicut tam magno grauamine alleuati sint

(f) *Bract. vbi supra. Fleta lib. 3. cap. 14.*
(g) *Britton. fol. 187. Bract. vbi supra.*
(h) *Carta Hen. primi. Mat. Paris. Mirr. cap. 2. §. 17.*
(i) *Rot. claus. 19. H. 3. m. 22.*
(k) *Carta H. 1. in libro rub. fol. 41. in Scaccario.*

sint, ita equis & armis se bene instruant vt apti & parati sint ad seruitium meum, & defensionem Regni mei. But these Pryuiledges and Quittances are discontinued, and the charge remayneth.

(l) Glanvil.lib.7.cap.9.10. Fleta lib.1.cap.8 & 9. & lib. 3.cap.16.17.&c. Bracton.lib.2 cap.16. Mirror.cap.5.§.2. Britton.162.

It is called commonly in (l) our Bookes seruitium militare, &c. or seruitium militis. And this seruice was created and prouided for the defence of the Realme, to performe which seruice the heires are not accounted in Law able till the age of one and twentie yeares. Therefore during their minoritie, the Lord shall haue the custodie of them, not for benefit only, but that the Lord might see, that they bee in their young yeares taught the deeds of Chiualrie, and other vertuous and worthy Sciences.

(m) Fortescue cap.44.

(m) Si hæreditas teneatur per seruitium militare, tunc per leges insans ipse, & hæreditas eius, &c. per Dominum fœdi illius custodientur, &c. quis, putas, infantem talem in artibus bellicis quos facere, ratione tenuræ suæ, ipse astringitur Domino fœdi sui, melius instruere poterit, aut velit, quam Dominus ille, cui ab eo seruitium tale debetur, & qui maioris potentiæ & honoris æstimatur, quam sunt alij amici propinqui tenentis sui? Ipse namque vt sibi ab eodem tenente melius seruiatur diligentem Curam adhibebit, & melius in hijs eum erudire expertus esse censetur quam reliqui amici iuuenis, &c. & reuera non minimum erit Regno accommodum, vt incolæ eius in armis sint experti, nam audacter quilibet facit, quod se scire ipse non diffidit.

(n) Lamb. fol.135.a.

(n) Amongst the Lawes of Saint Edward the Confessor, it is thus prouided. Debent enim vniuersi liberi homines, &c. secundum fœdum suum, & secundum tenementa sua arma habere, & illa semper prompta conseruare ad tuitionem Regni, & seruitium Dominorum suorum iuxta preceptum Domini Regis explendum & peragendum. And William the Conqueror confirmed that Law in these words. Statuimus & firmiter præcipimus, vt omnes Comites, & Barones, & Milites, & seruientes, & vniuersi liberi homines totius Regni

son baron & luy poient enter ẽ la terre & ouste le seignior, car ceo est hors de cas de le dit estatute, entant que le Seignior ne poit tender mariage a luy que est marie, &c. Car deuant le dit estatute Westm. 1. tiel issue female que fuit deins age de 14. ans, al tẽps de mort son auncester, & puis que el auoit accomplish lage de 14 ans, sans ascun tender de mariage per le Seignior a luy, tiel heire female donque puisioit enter en le terre, & ouste le seignior sicome appiert per le reherfall & parolx de le dit statute, issint que le dit Statute fuit fait en tiel cas, tout pur laduantage de Seigniors come il semble. Mes vncore ẽ touts foits est entendue per les parolx de m̃ le Statute que le Seignior nauera les deux ans apres les, 14. ans, come est auantdit, mes lou tiel heire female soit deins lage de 14 ans, nient marie al temps de mort s̃ auncester.

heire female, and then her husband and shee may enter into the Land, & oust the Lord, For this is out of the case of the said statute insomuch as the Lord cannot tender mariage to her which is maried &c. For before the said statute of W.1. such issue female which was within the age of 14. yeares at the time of the death of her ancestor, & after she had accomplished the age of 14. yeares, without any tender of mariage by the Lord vnto her, such heire Female might haue entred into the land, and ousted the Lord as appeareth by the rehearsall and words of the said statute, so as the said statute was made (as it seemeth) in such case altogether for the aduantage of Lords. But yet this is alwayes intended by the words of the same Statute, that the Lord shall not haue these two yeares after the 14. yeares as is aforesaid, but where such heire female is within the age of 14. yeares, and vnmarried at the time of the death of her ancestor.

regni nostri prædicti habeant & teneant se semper in armis & in equis vt decet, & oportet, & quod sint semper prompti & parati ad servitium suum integrum nobis explendum & peragendum cum semper opus adfuerit secundum quod nobis debent de feodis & tenementis suis de jure facere, &c. Out of these two Lawes the studious and learned reader will gather diuers notable things. And therefore if after the Lord hath the wardship of the body and the land, the Lord doth release to the infant his right in the Seignorie, or the Seignorie discendeth to the infant, he shall be out of ward both for the body and the land, for he was in ward in respect he was not able to doe those seruices which he ought to doe to his Lord, which now are extinct, and Cessante causa, cessat causatum? And our Author saith, that the tenure by Knights seruice draweth vnto it ward, Marriage, &c. so as there must be a tenure continuing. As if the Conusor in a statute Merchant be in execution, and his land also, and the Conusee release to him all debts, this shall discharge the execution, for the debt was the cause of the Execution, and of the continuance of it till the debt be satisfied, therefore the discharge of the debt which is the cause, dischargeth the execution which is the effect.

*See W.*1. *ca.*48. *the second part of the Institutes.*

¶ *Et trait a luy gard, marriage, & releife.* So as regularly there be three incidents to Knights seruice, (viz.) two of honour and submission, as Homage and Fealtie. And foure of profit, viz. Escuage, whereof he hath treated before, Ward (i. Wardship of the land) Marriage, and Reliefe; of all which our Author hath spoken. But there be other incidents to Knights seruice besides these, (a) as Aide pur faire fits chivalier, & aide pur file marier, &c. which at the Common Law were vncertaine, and were called rationabilia auxilia, because if they were excessiue and vnreasonable in the iudgement of the Court where they were questioned, they ought not to be paide: But now aswell in the Kings case, as in the case of the subiect, they are by Acts of Parliament reduced to certaintie which are worthy your reading.

20. *Ass.* p.7.

(a) *Grand Cust. de Norm. ca.*35. *Regist. orig. fo.*87. *Glanuil lib.*9. *ca.*8.35. *Fleta lib.*2. *cap.*40. *& lib.*3. *ca.*14. *Mirror ca.*1. §.3. *Britton fo.*55. *& 70. F.N.B.* 82. *b W.*1. *ca.*35. 25. *E.*3. *ca.*11. 11. *H.*4. 34. 5. *E.*3. 11. *Vid. Sect.*110.

¶ *Gard*, or Ward, in Latyne Custodia, and hereof the Lord is called Gardian, Custos, and the minor is called a ward or one in ward. (b) And albeit (as our Author saith) Knight seruice draweth with it ward, &c. yet by custome the heire of him that holdeth in Socage may be in ward.

(b) 8. *H.*3. *Prescript.* 38. *Pasch.*21. *E.*1. *Coram rege Rot.*43. *Nota pro Hiberniæ Prior del St. Trinity de Dublins case.*

¶ *Marriage.* Maritagium, betokeneth not only the copulation of man and wife in marriage, but also (as in this place here) the interest of the Gardian in bestowing of a ward in marriage, which the Law gaue to the Lord not for his benefit only, but that he should match him vertuously, and in a good family without disparagement as shall be said hereafter, which is the principall foundation of his estate.

¶ (c) *Reliefe.* Relevium, is deriued from the Latyne word Relevare; for so (d) ancient Authors say and giue this reason, Quia hæreditas quæ jacens fuit per antecessoris decessum, relevatur in manus hæredum, & propter factam relevationem facienda erit ab hærede quædam prestatio que dicitur relevium. And in Domesday it is called relevamentum and relevatio.

(c) *Vid. Sect.*112.
(d) *Bracton lib.*2. *ca.*36. *fo.*84. *Fleta lib.*1. *ca.*10. *& lib.*3. *ca.*16. 17. *Britt. ca.*69. 70. *Glanu l. lib.*9. *ca.*4. *& lib.*7. *ca.*9. *Ockam de differentiis vel vicium.*

The reliefe of a whole Knights fee is fiue pound, and so according to that rate. And this reliefe was as some hold certaine by the Common Law, (*) but the reliefe of Earles and Barons were incertaine, and therefore were called relevia rationabilia but the statute of Magna carta, cap.2. limits them in certaine, and mentioneth also a Knights fee. But I reade in the booke of Domesday, Quod Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma sua & equum vnum cum sella & alium sine cella, quod si essent ei canes vel accipitres præstabantur regi, vt si vellet, acciperet.

(*) *Ockam. vbi supra. Bracton lib.*2. *fo.*85.

Since Littleton wrote (e) there is a good Law made against fraudulent Feoffments, Gifts, Grants, &c. contriued of fraude to hinder or defraude Lords, &c. of their Reliefes and Herriots amongst other things for the exposition of which statute reade the Authorities quoted in the margent. And it is to be obserued that the words of the said Act of 13. Eliz. are, (bee it therefore declared, ordeyned, and enacted) and therefore like cases and in semblable mischiefe shall bee taken within the remedy of this Act by reason of this word (declared) whereby it appeareth what the Law was before the making of this statute.

(e) 13. *Eliz. ca.*5. 17. *E.*3. *Reliefe* 3. 7. *E.*3. *ib.*11. *lib.*3. *fo.*80. *& ca. Twynes case. Lib.*5. *fo.*60. *Goochers case. Lib.*6. *fo.*18. *Pakemans case. lib.*10. *fo*56. *b. See also the statutes of* 3. *H.*7. *ca.*4. *&* 32. *E.*3. *ca.*6. *Vid. Mich.*12. *&* 13. *Eliz. Dier* 295.

¶ *Son heire male.* (f) For regularly by the Common Law the heire shall not be in ward vnlesse he clayme as heire by discent. The statute of Merton, De hijs qui primogenitos feoffare solent; (g) Did helpe Feoffments by collusion in certaine cases. And Britton saith that Robert de Walrand a sage of the Law did aduise the great Lords of the Realme to make the said statute, which when it was past the same Act tooke his first effect in the heire of Walrands owne heire, whereof Britton maketh a speciall remembrance. But now (h) by the statutes of 32. and 34. H.8. of wills, he which holdeth lands by Knights seruice may by Act executed in his life time, or by his last will in writing dispose two parts as by the said Acts appeareth. If hee dispose all by act executed, then it shall stand good against the heire, so

(f) *Britton.* 168. *Fleta. lib.*1. *ca.*9.
(g) *Merton ca.*6. *Bract fo.*85. *Britt. fo.*65. 9. *H.*4. 6. 4. *H.*7. *ca.*17. 27 *H.*8. 7. 89. *Partridges case pl. com.*83.
(h) 32. *H.*8. *ca.*1. 34. *H.*8. *ca.*5.

so as nothing shall discend vnto the heire. But in case of a Deuise by his last Wil, a third part shall discend to the heire, though all be deuised away: & if the Tenant leaue a third part to discend, then the deuise is good for the residue. (i) But these things require so many diuersities grounded vpon euident reasons, and are so plainely expressed in my Commentaries, as they (being verie long) shall not need to be repeated here. (k) And that the tenure by Knights seruice draweth to it Ward, Marriage, and Reliefe, is of great antiquitie, for so it was in the time of King Alfred.

(i) Li.3.fo.25.26.in Taylors case. Li.6.fo.75 in Sir Georg Cursons case. Li.8.fo.163. Mayors case Eod.lib.fo.171. in Virgil Parkers case.
(k) Mir.ca.1.§.3.

¶ *Quant tiel tenant mort.* Here Littleton speaketh not of a dying seised by the Tenant, for in many cases the heire shall be in ward, albeit the Tenant died not seised, &c. nor in the homage of the Lord. As if the Tenant maketh a feoffement in fee vpon condition, and the feoffor dieth, after his death the condition is broken, the heire within age entreth for the condition broken, he shall be in ward, and yet the feoffor had no estate or right in the land at the time of his death, but onely a condition, and which was broken after his decease. (k) But because the condition restoreth the tenant to the land in nature of a discent, (for he shall be in by discent) by the same reason shall it restore the Lord to the wardship, seeing now (as Littleton saith) the heire of his Tenant is within age, and not able to doe him seruice, and no default in the Lord to barre him of his wardship.

(k) 19.E.3.36.tit.Gard 92. 33.E.3.gard 162. 11.H.7.12. 19.E.3.Gard 114. 18.ass.18. 40.ass.36. 20.H.6.162. 4.H.6.16.b.F.N.B.143. 6.H.4.4.a.

(l) And so I doe take it, that if the heire within age recouer in a Dum non fuit compos mentis, or Formedon en discender, or remainder as heire, or such like, the heire shall be in ward, for these be stronger cases than the former, for here a right doth discend to the Demaundant, which right being by course of Law restored to the possession of the heire within age, by consequence the Lord is to haue the wardship of him, but in the case of the condition, no right at all discended to the heire, as hath beene said.

(l) 7.H.4.12. 11.H.7.12. 22.E.4.7.6.40.E.3.43. 4.M.136 15.E.4.10,11.

33.E.3.Gard 162.

And so if tenant in tayle, the remainder in fee, maketh a feoffement in fee, and dieth leaning the issue in taile within age, if the feoffee infeoffe the issue in taile, whereby hee is remitted, he shall be in ward to the Lord: for as he is restored to the title of the land as heire, so is the Lord restored to his title of wardship as Lord of the Fee. And as to this purpose herein I take no difference betweene a right of action and a right of entrie discending, when by action the right of the land is lawfully recouered by the heire within age, to his Tenant, and albeit hee dyed not in his homage, yet there was a right of homage, and no default or laches was in the Lord, or act done by him to preiudice himselfe thereof.

11.H.7.12.

But if one leule a fine executorie (as sur grant & render) to a man and his heires, and he to whom the land is granted and rendred, before execution dieth, his heire being within age entreth, he shall not be in ward, for his Ancestor was neuer tenant to the Lord: and so there is a manifest diuersitie betweene this and the other cases. Et sic de cæteris.

But if the Tenant maketh a feoffement in fee of lands holden by Knights seruice, to the vse of the feoffee and his heires, vntill the time that the feoffor pay to the feoffee or his heires a hundred pounds, for the which a time and place is limitted; the feoffee dieth, his heire within age, the Lord shal haue the wardship of the bodie of the heire, and of the lands of the feoffee, conditionally, for he cannot haue a more absolute interest in the wardship, than the heire hath in the tenancie: and therefore if the feoffor pay the mony at the day and place, and entreth into the land, in this case both the wardship of the bodie and lands is deuested, because the Lord had no absolute interest in neither of them, but doth depend vpon the performance or not performance of the condition.

13.El.Dyer 298.

(l) So if the Conusor of a fine executorie of lands holden by Knights seruice, dieth his heire within age, the Lord shal haue the wardship of the bodie and land: but if the Conusee entreth, the heire is disherited, and the Lord hath lost the whole benefit of his wardship.

(l) 12.H.4.16. per Thirning.

If the Disseisee dieth, his heire being within age, (m) the Lord shall haue the wardship of the heire of the bodie of the Disseisee. (n) But put the case that in that case the Disseisor dieth seised, and his heire within age, the Lord may seise the wardship of his heire also, and of the land also: but the doubt is, whither the heire of the Disseisee shall after the discent to the heire of the Disseisor, continue in ward, for that after the discent the heire of the Disseisor is become his lawfull tenant, and the heire of the Disseisee is not tenant vnto him vntil he hath recouerd the land.

(m) 41.E.3.225.
(n) 15.E.4.11.

If Cestuy que vse before the Statute of 27.H.8. had died, his heire within age, the Lord (o) should haue the wardship of his heire: and if the feoffee had died, his heire within age, the Lord should haue had the wardship of his heire also, and so a double wardship for one and the same land, the one by the Statute of 4.H.7. the other by the Common law.

(o) 14.H.8.5. 4.H.7.cap.
(p) 41.E.3.26.tit. Auowrie 164. 20.H.6.9 48.E.3.8.b 10.E.3.26. 31.E.3.tit.Gard. 116. 18.E.3.7. 14.H.4.38. 1.H.5.Grant 43. 5.E.4.3. 7.E.4.27. 15.E.4 13.2.E.3 Auow.181.

(p) Tenant by Knights seruice maketh a gift in taile, the remainder in fee, Tenant in taile maketh a feoffement in fee, and dieth, his heire within age, the Lord shall haue the wardship of him: and if the Feoffee dieth, his heire within age, the Lord shall haue the wardship also of his heire, and of the land.

If

If Tenant by Knights seruice maketh a gift in taile, and the Donee maketh a feoffement in fee, and the donee dieth his heire within age, the Donor shall haue the wardship of him, because he is his tenant in right. (q) But if the Feoffee dieth, his heire within age, the Donor shall not haue the wardship of his heire, but the Lord paramount, because he is tenaunt in fait to him, neither shall the donor anow vpon the Feoffee or his heyre, for the seruices due vnto him, because he must in his anowrie shew the reuersion in fee to be out of him by the feoffement, and consequently the seruices incident to the reuersion are also out of him, but he shall anow vpon the Donee and his issues: and thus are all the bookes that seeme to be at variance, either answered or reconciled.

(q) So was it holden T. 12. El. in Com. Banc per Cur. which my selfe heard and read in Sir Tho. Wyats case.
(r) So was it resolued in Sir Tho. Wyats case. vbi supr.

(a) *La terre tenus de luy, &c.* Littleton here speaketh of Lands holden of a Subiect: for if a man hold land of the King by Knights seruice in Capite, and other lands of other lords, and dieth his heire within age, the King shall haue the wardship of all the lands by his Prerogatiue: and this was due to the King by the Common Law, the fees of certaine excepted, as in the Statute of Prærogatiua Regis cap. 1. appeareth.

(a) Glanuil. li. 7. c. 10. Bract. li. 2. fo. 85, 86, 87. Brit. li. 3. ca. 7. Flet. li. 2. c. 10. 9. H. 3. Prerog. 25 21. H. 3. ib. 26. Rot. Pat. 6. Iohan. Stat. Prerog. Reg. cap. 1.

But if a man holdeth lands of the King by Knights seruice, as of an Honour or Mannor, &c. (b) in that case the King shall onely haue the lands holden of him, and not of any other. Yet by reason of tenures of the King by Knights seruice, of certaine honours, (while they were in the Kings hands) the King (as some haue said) had (as it were by prescription) his Prerogatiue, viz Raleigh hage net honony and Peverel, and so of lands holden by Knights seruice of the Duchie of Lancaster in the countie Palatine.

(b) Bract. vbi supr. Mag. ca. 21. 1. E. 6. c. 7. 5. 47 E. 3. 21. 29 H. 8. tit. Liuery 58. 28. H. 8. ib. 55.

(c) When an heire hath bin in ward to the King by reason of a tenure in Capite, after his full age he must sue liuerie, which is halfe a yeares profit of his lands holden. But if he bee of full age at the time of the death of his Ancestor, then he shall pay for lands in possession a whole yeares profit for Primer seisin: but if it be of a reuersion expectant vpon an estate for life, as tenant in Dower, Tenant by the Curtesie, or Tenant for life, then he shall pay but the moity of one yeares profit.

(c) Lib. 8 fo. 171. Hales case. 28 H. 8 Br. tit. Liuerie 60. Vi. Sect. 154.

(d) If the heire be in ward by reason of a tenure of an Honour or Mannor (except as before he shall not sue liuerie, but an Ouster le maine cum exitibus, albeit he neuer made tender. (e) And if he be of full age, the King shall haue no Primer seisin, but Reliefe. But where the tenure is in Capite, there the King shall haue the meane profits vntill the tender be made, and if the tender be made, and not duly pursued, the King shall also haue all the meane profits.

(d) 1. El. Dy. 168.

(e) 32. H. 8. tit. Liu. Br. 62.

(f) He that holdeth of the King by Socage in chiefe, and dieth, his heire of full age, the King shall haue liuerie and Primer seisin onely of the lands so holden, and not of the lands holden of others. (g) But if the heire of such a Tenant in Socage in chiefe, be within the age of fourteene at the death of his Ancestor, he shall neither sue liuerie, nor pay Primer seisin, either then or any time after: and the reason thereof is, for that the custodie of his bodie and lands in that case, belong to the Prochein amy, as Gardein in Socage. (h) Neither shall the King haue Primer seisin of Lands holden in Burgage, (as some haue said) for that it is no Tenure in Capite.

(f) 28. H. 8. Liuer. Br. 60. 45. E. 3. 11. 35. H. 6. 52. Staunf. 12. b.
(g) 20. El. Dy. 362. F. N. B. 259. b.
(h) F. N. B. 261. 7. E. 4. 17. Staunf. Prer. 13. Br. tit. Liu. 64.

Note, there is a generall liuerie, and a speciall liuerie: A generall liuerie hath two properties:

First, it is full of charge to the heire, for he must find an office in euerie Countie where he hath land, or else he cannot sue a generall liuerie, and hee must sue out his writ of Ætate probanda, &c.

(i) The second propertie is, that it is full of danger: First, It concludeth the heire for euer after to denie any Tenure found in the Office. Secondly, If Liuerie be not sued of all and of euerie parcell which the King ought to haue, whither it be found in the office, or not found (for a generall liuerie could not be sued by parcels) the liuerie is void, and the King may reseise the lands, and be answered of the meane profits. So it is if the Office be insufficient, or the Processe whereof the Liuerie was made be insufficient, or the like, the King shall reseise, as is aforesaid. (a) Therefore for the ease of the heire, and for anoyding of such danger, the heire for the most part sueth out a speciall liuerie, which containeth a beneficiall pardon, and sueth the sayd charges, and preuenteth the said conclusion, and the other dangers, which being of grace, and not of right, as the generall liuerie is, the King may well and iustly take more for a special liuerie, than for a generall, for the causes aforesaid, but euer with such moderation as the heyre may chearefully go through therewith.

(i) 4. E. 3. 33. 47. E. 3. 21. 21. H. 6. 28 b. 32. H. 6. 50. 29. Ass. 8. Pl. Com. Countesse of Leic. case. 44. E. 3. 1. & 25. 12 R. 2. Lin. 28. 2. H. 7. fo. 12.

(a) 1. H. 4. 6 b. 37. H. 8 Estop. Br. 218 7. E. 6 ib. 222. Scowfields case. Tr. 8. Ia. mem. Ward. 23. El. Dy. 377. 28. H. 8. Br. tit. Liuery 56.

Note that a liuerie is in nature of a restitution, which is to bee taken fauourably: for if liuerie be made of a mannor cum pertinentijs, the heire shall thereby haue the aduowson appendant, otherwise it is in Grants by Letters Patents.

41. E. 3. 5. 1. E. 6. 27. ass. 48. Pl. Com. 252. 20. El. Dy. 360.

Since the time that Littleton wrote (c) there is a Court of Wards and Liueries erected by Authority of Parliament concerning the order of the Kings Wards, &c. to be holden before the Master of the Wards, and the Councell of that Court appointed by those Acts. This hath

(c) 32. H. 8. 46. 33. H. 8. c. 22.

made such a manifold alteration, as were too long here to be inserted, & doth belong to another Treatise mentioned in the Epistle of the iurisdiction of Courts, where it were necessary, that the true iurisdiction of that Court should be set downe, a matter of no great difficultie, seeing it began so late by Authority of Parliament. And since Littletons time, (d) there is a right profitable Statute made concerning the finding of Offices and other things, not only concerning the Kings wards, or their rights and possessions, but some other provisions very beneficiall to the subiect, in all to the number of 12. (e) First that such persons as hold for tearme of yeares, or by copy of Court Rolle, or haue any Rent, common or profit appurtenant out of any lands found in any office, wherby the King is intituled to the wardship of the Lands or Tenements, or to the forfeiture of the Lands or tenements vpon attainder of treason, felony, præmunire, or any other offence, yet may they haue, hold, enioy, and perceiue their seuerall estates, interests and proffits, although they be not found in the office. And this being a beneficiall Law the estates of Tenant by statute staple, Merchant, and elegit, & Executors that hold lands for payment of debts are taken to be within the benefit of the clause: (f) and so is a doubt in 14. Eli. Dier cleared.

2. Where it is found, that the heire is of fewer yeares than in truth hee is, hee shall not be concluded hereby, (g) but euery such heire at his very full age may prosecute a Writ of ætate probanda, and sue his Liuery or ouster le maine: in which case he had no remedy by the Common Law, but the King may trauerse such an Office found.

(a) 3. Where one person or more be found heire, where another person is heire, the partie grieued had no remedy.

4. Or where one person or more be found heire in one County, and another person or persons found heire in another County, there could haue beene no interpleading.

5. Or if any person be vntruly found by office Lunaticke, or ideot, or dead, the party grieued may trauerse the said office, and you may reade in Kens case how the office shall be trauersed vpon this Act.

(b) 6. Where it is vntruly found by office that any person attainted of Treason, Felonie, or Præmunire is seised of any lands, &c. the party grieued hauing iust title of freehold, shall haue his trauers or Mans de droit (without being driuen by this double matter of Record) to his petition of right as he was before this Statute, which is much more speedy then the petition; for vpon the petition there be foure Writs of search, and euery one must haue 40. dayes before the seruing, and now but two Writs of search.

7. Where an office is found by these words or the like quod de quo vel de quibus tenementa predicta tenentur, iuratores pred' ignorant, or holden of the King per quæ seruitia iuratores ignorant, it shall not be taken for any immediate tenure of the King in chiefe, but in such cases a melius inquirendum to be awarded as hath beene accustomed of old time. This branch hath beene well (d) expounded, for if the first Office finde a tenure of the King per que seruitia, &c. yet if vpon the Melius inquirendum the tenure be found of a subiect, the first office hath lost his force per sensum huius statuti, and need not be trauersed, and the Melius, &c. is in nature of the Diem clausit extremum or mandamus, &c. and this was but a declaration of the auncient Common Law, as by the words of the Statute (as hath beene accustomed of old) it appeareth; but if vpon the melius it be found againe as vncertainely as before is said, then it is in iudgement of Law a tenure in Capite, and so it was before the making of this Act, and so are the bookes that speake hereof to be intended; but if vpon the melius a tenure be found of the King Vt de manerio per que seruitia, &c. it shall be taken for Knights seruice.

8. Where it is found that Lands, &c. are holden of the King immediately where in truth they are holden of a common person and not of the King immediatly, and that the heire is within age, such heire within age shall haue his trauerse, &c. which he could not haue had by the Common Law.

9. The meane Lords of whom the lands are holden which the King hath by his prerogatiue during the minority of the heire shall receiue and take such Rents as are due vnto them by the hands of such of the Kings officers as receiue the proffits of the same lands, where before that Act, the Lords vsed to spare the Rents due, &c. during the Kings possession, and after Liuery sued, charged the heire with all the arrerages.

10. There is a prouision for offices found before the statute or before the 20. day of March next after the Act.

11. A speciall clause is that a Scire fac' shall be awarded vpon euery trauers by force of this Act, and where the partie was put to his petition, there vpon the trauers there shall be the Writs of search granted.

12. And lastly, if iudgement shall be giuen against the King vpon a trauerse by vertue of this Act, all former rights appearing of Record are saued to the King. But albeit these points are most necessary to be knowne, yet let vs now returne to Littleton.

Littleton warily and materially (treating of a common person) saith tenus de luy holden of him, for he shall haue nothing in ward but that which is holden of him. But the King by his prerogatiue

(d) 2. E. 6 ca. 8.

(e) 4. E. 4. 33. 21. H. 8. tit. entre congeable. Fo. 125.

(f) 14. Eliz. Dier fo. 319.

(g) 5. Mar. Dier. 135.

(a) 24. E. 3. 31. 38. 9. H. 6. 18. 12. E. 4. 16. 30. Ass. 28. lib. 4 fo. 56. & 60. Sadlers case. Stanf. prerog. 58. b. 52. 5. E. 4. 4. 16. E. 4. 4. 1. H. 7. 14. 2. H. 7. 12. 4. H. 7. 15. 8. H. 7. 11. F. N. B. 262. 12. R. 2. Liuery 28. F. N. B. 253. Lib. 7. fo. 44. 45. Kens case.

(b) 4. E. 4. 23. 10. H. 6. 19. Lib. 4. fo. 56. & 60. Sadlers case. 32. H. 8. entre Conge. Br. 125. 14. E. 3. ca. 14.

(c) Vid. lib. 6. fo. 6. Wheelers case.

(d) 12. Eliz. Dier fo. 292. a. Lib. 8. fo. 168. Fern Stoughtons case.

13. Eliz. Dier. 296. 4. H. 6. 13. 10. H. 4. 2. b.

33. E. 4. 12. 40. E. 3. 12. 21. H. 6. 11. 2. H. 7. 5.

prerogatiue ſhall not only haue ſuch lands and tenements ſwhich (as hath beene ſaid) the heire of his Tenant by Knights ſeruice in capite holdeth of others, but ſuch inheritances alſo as are not holden at all of any, as Rent charges, Rent ſecke, Faires, Markets, Warrens, Annuities, and the like; and ſo is the Law clearely holden at this day, as it hath beene reſolued; and ſo experience teacheth, that the King by his prerogatiue giuen to him by the ancient Common Law ſhall haue thoſe inheritances not holden, and ſo the Quere made by (o) Stanford is cleered and made without queſtion. (o) *Stanf. prer. fo.8.*

The Law is changed ſince Littleton wrote in many caſes both for the marriage of the body, and for the Wardſhip of the lands, and a farre greater benefit giuen to the Lords then the Common Law gaue them, and ſome aduantage giuen to the heires, which before they had not, which ſhall be touched briefly.

If the Father had made an eſtate for life or a gift in tayle of lands holden by Knights ſeruice to his eldeſt ſonne, or other heire apparant within age, the remainder in fee to any other, and died, the heire ſhould not haue beene in ward, for this was out of the ſtatute of Merlebridge: But at this day the heire ſhall be in that caſe in ward for his body, and a third part of his land. *Marlebridge, ca. 1. pl. com. 82. 27.H.6.10. 33.H.6.14.*

(a) So if the father had infeoffed his eldeſt ſonne within age and a ſtranger and the heires of the ſonne, and died, the ſonne ſhould haue beene out of ward; but at this day he ſhall bee in ward for his body, and for a third part of his moitie. (b) So if the father had infeoffed any of his younger ſonnes or others for the making of his wife a ioynture, or for the aduancement of his daughters, or for the payment of his debts, and after infeoffe or conuey the the land to his heire and died, his heire within age, his heire ſhould not haue beene in Ward, becauſe hee was bound by the law of nature and nations to prouide for them, but now in all theſe caſes the heire ſhall be in ward for his body, and a third part of the land, and all this groweth by conſtruction vpon the Statutes of 32. and 34.H.8 (c) But if either the eldeſt ſonne, or any of the younger ſonnes purchaſe lands of his father which are holden by Knights ſeruice, bona fide for the reaſonable value, this is out of theſe ſtatutes, and the heire ſhall neither bee in ward nor pay Primer ſeiſon. (a) *31.E.3. Colluſion 29. 33.H.6.14.* (b) *33.H.6.1. & 27.H.8.7. Lib.6.fo.76.77. Sir George Curſons c. ſe. 10.Eliz.260.3.Eliz.193. 20.Eliz.361. 19.Eliz 276. 5.Marie.158.* (c) *Lib.8.fo.83. Leonard Loueys caſe.*

And in all the caſes aboueſaid (for example) if a Feoffment be made to the vſe of his wife for life, or to the vſe of any of his younger ſonnes for life, or to the vſe of ſome perſons for life for payment of debts, and vpon all theſe eſtates a remainder is limitted ouer, if the wife or Tenant for life die in the life of the father, (d) or if it be conueyed to the vſe of the wife or younger children in fee, or fee taile, or in fee for payment of debts, and theſe lands are conueyed away in the life time of the father, after the deceaſe of the father no wardſhip, &c. accrueth by force of any of the ſaid Statutes, for ſuch eſtates muſt continue till the title of wardſhip doe growe. (d) *Lib.2.fo.91. Bingham's caſe. lib 6. vbi ſupra 84. Lib.8 fo.165. Digges caſe.*

(e) If the father conuey his lands holden by Knights ſeruice either of the King or of any meane Lord to his middle ſonne in taile, the remainder to the youngeſt ſonne in fee and dieth the eldeſt being within age, and the King or Lord ſeize the body and two parts of the land, if the middle brother die without iſſue, the King or the Lord ſhall not haue any benefit of the ſtatute againſt him in remainder, for the ſtatute was once ſatisfied and the ſtatute extendeth not to him in remainder. (e) *14.Eliz. Dier 308. 3. Marie Dier 130. Lib.2.fo.93.94. Bingham's caſe, & Northcot's caſe. Lib.10.fo.80.b. Leonard Loueys caſe.*

(f) If there be a grandfather, father, and diuers ſonnes, and the grandfather in the life of the father conuey his lands holden by Knights ſeruice to any of the ſonnes, this is out of the ſtatute of 32.H.8. and if the grandfather die, there is neither Wardſhip nor Primer ſeiſon due, For the father hath the immediate care of his ſonnes, but if the father be dead, then the care of them belong to the grandfather, and then if the grankather conuey any of the lands to any of the ſonnes, it is within the ſaid ſtatute: (g) and a conueyance to the vſe of any of his collaterall blood, which is not his heire apparant is out of the ſaid ſtatute. And ſo are conueyances eyther by father, either by father or mother to or to the vſe of baſtard children out of the ſtatute, for quiex damnato coitu naſcuntur, inter liberos non computentur. And the Preamble ſpeaketh of lawfull generations. If a man ſeiſed of lands holden in Socage conuey them to the vſe of his wife, or of his children, or payment of his debts and after purchaſe lands holden by Knights ſeruice in Capite, and dieth his heire within age, the King ſhall haue no part of the Socage land. (h) But if in that caſe he had by his will in writing deuiſed his Socage lands in fee, and after purchaſed lands holden in capite, and dieth, the King ſhall haue ſo much of the Socage lands as will make a full third part of all. The benefit that grew to the ſubiect by thoſe Acts of Parliament, were that tenants in Fee ſimple might deuiſe their lands by their Laſt wills in writing in ſuch manner and forme, as by the ſaid Acts appeareth. Alſo that the father might infeoffe his eldeſt ſonne or other heire lineall or collaterall of his lands holden by Knights ſeruice, and two parts of the lands ſhalbe out of ward. And in * Mightes caſe you ſhall reade excellent matter of eſtates made vpon colluſion. (f) *Lib 6.fo.77. Sir George Curſons caſe. 2.Eliz. Dier.181. 8.Eliz. Dier 252.* (g) *Lib.10.fo.83. Leonard Loueys caſe. 18.Eliz. Dier.385.* (h) *Leon. Loueys caſe vbi ſupra. Butler & Bakers caſe. lib.3.fo.25. &c.* * *Lib.8.fo.163. Mightes caſe.*

And both the Statutes of 32. and 34.H.8. concerning wills and wardſhips are many wayes preiudiciall to the heires, as taking one example for many. If Tenant by Knights

seruice make a feoffment in fee to the vse of his wife and her heires, or to the vse of a younger sonne and his heires, or wholy for the payment of his debts. In these cases although nothing at all of the lands so holden discend to the heire, but her is disherited of the same, yet his bodie shall be in ward: but this for a little taste may suffice, more hereof you may reade in my Reports in the seuerall Cases noted in the margent.

Lect. Lawyers case. vbi supra. 22. Eliz. Dier. 367.

¶ *Pleine age.* **Full age regularly is one and twentie yeares.**

32. E. 3. gard. 61.

¶ *Entendement del ley. Entendement .i. intellectus* **the vnderstanding** or intelligence of the Law. Regularly Iudges ought to adiudge according to the common intendement of Law.

2. H. 5. 4.

10. H. 6. 8. 21. E. 3. 33. a. 27. H. 8.

By intendement of Law euery Parson or Rector of a Church is supposed to be resident on his Benefice, vnlesse the contrarie be proued.

Of common intendement one part of a Manor shall not be of another nature then the rest.

Of common intendement a will shall not be supposed to be made by collusion. In facto quod se habet ad bonum & malum magis de bono, quam de malo lex intendit. Lex intendit vicinum vicini facta scire. Nulla Impossibilia aut inhonesta sunt præsumenda, vera autem & honesta, & possibilia. Lex semper intendit quod conuenit rationi. As in this case the Gardeine shall haue the custodie of the land vntill the heire come to his full age of one and twentie yeares, because by intendement of law the heire is not able to doe Knights Seruice before that age, which is grounded vpon apparant reason. There note that the full age of a man or a woman to alien, demise, let, contract, &c. is one and twentie yeares, the ciuill Law fiue and twentie yeares, for then the Romans accounted men to haue plenam maturitatem, and the Lombards at eighteene yeares.

Vide Britton. fol. 169.

¶ *Si le heire ne soit marie al temps del mort de tiel Auncestor, &c. Auncestor* **is deriued of the Latine word** antecessor, **and in Law there** is a difference betweene antecessor and prædecessor. For antecessor is applyed to a naturall person, as I. S. & antecessores sui, but Prædecessor is applyed to a bodie Politique or Corporate, as Episcopus London & prædecessores sui. Rector de D. & prædecessores sui, &c.

Glanvil. lib. 7. cap. 1. Mirror. cap. 5. §. 2. Britton. fol. 168. b. 39. H. 6. cap. 2.

¶ *Mes si tiel tenant deuie son heire female esteant del age de* 14. *ans, &c.* **And the reason as I find in Antiquitie, wherefore** the Law gaue the marriage of the heire female if she were within the age of fourteene, and that she should not marrie her selfe, was pur ceo que les heires females de nostre terre ne se marieront a nous enemies, & dount il nous couiendroit lour homage prendre, si eux se puissent marier a lour volunt. This is a speciall age for an heire female to bee out of ward, if shee attaine vnto it in the life time of her ancestor, for at that age she may haue a husband able to do Knights Seruice. A woman hath seuen ages for seuerall purposes appointed to her by Law: as seuen yeares for the Lord to haue aide pur file marier: nine yeares to deserue Dower, Twelue yeares to consent to mariage, vntill fourteene yeares to be in ward, fourteene yeares to bee out of ward, if she attained thereunto in the life of her Ancestor; Sixteene yeeres for to tender her mariage if she were vnder the age of fourteene at the death of her ancestor, and one and twentie yeares to alienate her Lands, Goods and Chattels.

35. H. 6. 49. Bracton. lib. 2. cap. 37.

A man also by the Law for seuerall purposes hath diuers ages assigned vnto him, viz. twelue yeares to take the oath of Alleageance in the Tome or Leet. Fourteene yeares to consent to mariage, fourteene yeeres for the heire in socage to choose his Gardein, and fourteene yeares is also accounted his age of discretion. Fifteene yeares for the Lord to haue aide pur faire fitz Chiualer. Vnder one and twentie to be in ward to the Lord by Knights Seruice. Vnder fourteene to be in ward to Gardein in Socage. Fourteene to be out of ward of Gardein in Socage, and one and twentie to be out of ward of Gardein in Chiualrie, and to alien his Lands Goods and Chattels.

34. E. 1 Stat. 3. Glanvil. lib. 7. cap. 9. Dier 5. Marie 162. Bracton. lib. 2. cap. 37. F. N. B. 202.

¶ *Mes si tiel heire female soit deins lage de* 14. *ans & nient marie, &c. Le Seignior auera la gard del terre.* **But put case that the Lord cannot** haue the Wardship of the Land, as if the Lord before the age of fourteene granteth ouer the wardship of the bodie, in this case the grantee of the bodie cannot enioy the benefit of the two yeares, because he cannot hold ouer the land, and the Lord, which hath the wardship of the Land only should lose the benefit of the two yeares, because he hath the lands only and cannot tender any mariage, therfore in this case the heire female shal enter into her land at her age of 14. yeares. So if a tenant holdeth of one Lord by prioritie, & of another by posteriority & dieth, his heire female within the age of 14. yeares, the Lord by posterioritie shall haue the lands, but vntill her age of 14. yeares, because the mariage belongeth not to him. Also if the Lord marieth the heire female within the two yeares, her husband and shee shall presently enter into the lands. For Cessante causa, cessat effectus: & cessante ratione legis, cessat beneficium legis.

35. H. 6. 52. tit. gard. 71. Stanford. 3. b. F. N. B. 256. 259. 35. H. 6. 40.

Britton. fol. 169. 35. H. 6. 52.

If the Lord tender a conuenable mariage to the heire within the two yeares, and shee marie elle where within those two yeares, the Lord shall not haue the forfeiture of the mariage, for the Statute giueth the two yeares only to make a tender. 35.H.6.52.35.H.6.tit.gard. 71.Lib.6.fol.71. the Lord Darcies case.

¶ *Et si le seignior deins les dits 2. ans ne luy tender tiel mariage, &c. donque el al fine del dits 2. ans poet enter, & ouste le seignior.* This is so euident, as it needeth no explication.

¶ *Mes si tiel heire female soit marie deins lage de 14. ans en la vie son Ancester, & son ancester denie il esteant deins age de 14. ans le seignior nauera la gard forsque de la terre iesque al age de 14. ans &c.* Note, albeit the heire female be maried at the age of twelue yeares in the life of her ancestor, (at which age shee may consent to Matrimony) to a man of full age, that is able to doe Knights Seruice, yet if the Ancestor die before her age of fourteene, the Gardein shall haue the Land vntill her age of fourteene, because (as hath beene said) that is the time appointed by the Common Law. And so if the heire male be married in the life of the Ancestor at his age of fourteene yeares, and the Ancestor dieth, the Lord shall haue the Land vntill the ward commeth to the age of one and twentie. F.N.B.142

¶ *Car ceo est hors del case del dit statute, intant que le seignior ne poet tender mariage a luy que est marie.*

Natura non facit vacuum, nec lex supervacuum. The Law doth neuer enforce a man to doe a vaine thing.

And where the said Statute of W.1. giueth vnto the Lord the said two yeares, thereby is implyed, that if he dieth within the two yeares, his Executors or Administrators shall haue the same. For when the Statute vesteth an interest in the Lord, the Law giueth the same to his Executors or Administrators. Then put case, That a Lord hath the wardship of the bodie and land of an heire female, and maketh his Executor and dieth before her age of fourteene yeares, whether the Executor shall haue the two yeares, because the Executor is not Lord. But I take it, the Executor hauing the wardship of the bodie and land, shall in that case haue the two yeares, for that they were vested in the Lord. 27.H.8.3.11.E.3.Executors 77.4.E.3.55. 28.Ass p 7.

It is further prouided by the said Statute, that if the Lord tender a Conuenable marriage to the heire female, within the said two yeares, and the heire female refuseth, then the Lord shall hold the land vntill her age of one and twentie yeares, and further vntill he hath leuied the value of her mariage. But if the Lord doth not tender a mariage within the two yeares, he shal lose the value of the mariage, and content himselfe with the two yeares value. 31.Ass.p.26. Lib.6 fol.71. L.Darcies case.

¶ *Car deuant le dit statut &c. sicome appiert per le reherfall & parols de le dit statute.* Nota, the rehearsall or preamble of the Statute is a good mean to find out the meaning of the statute, and as it were a key to open the vnderstanding thereof. The tender of a mariage to an heire female before the age of fourteene is void, which must be vnderstood where the Lord may hold the land for the said two yeares, for then the statute appointeth the time of the tender, but where the Lord cannot haue the two yeares, he may tender a mariage to the heire female at any time after the age of twelue and before fourteene, for so he might haue done at the Common Law. 35.H.6.52 gard.71. Lib.6 fo.71. Lord Darcies case Britton.169.

Sect. 104.

¶ Nota que le plein age de male & female solonque le common parlance, est dit lage de 21. ans. Et lage de discretion est dit lage de 14. ans, car a tiel age le enf. que est marie deins tiel age a vn feme, puit agreer

NOte that the full age of male and female according to common speech is said the age of 21. yeares. And the age of discretion is called the age of 14. yeares. For at this age, the Infant which is maried within such age to a wo-

¶ Of full age, which is the age of one and twentie, and of the age of discretion, which is the age of fourteene somwhat hath beene spoken before. But now to the point of agreement or disagreement in this case. The time of agreement, or disagreement, when they marrie infra annos nubilles for the woman at 12. or after, and for the man, at fourteene, or after, and there need no new mariage, if they so agree, but disagree they can-not 5.Mar.gard.Br.pl.vltimo. 39.E.3.32.33.prer.reg cap.6. Tr.24.Eliz. Rot.841. in bank le roy Banister case.

not before the ſaid ages, and then they may diſagree and marie againe to others without any diuorce: and if they once after giue conſent, they can neuer diſagree after. If a man of the age of fourteene marie a woman of the age of ten, at her age of twelue he may as well diſagree, as ſhe may, though he were of the age of conſent, becauſe in contracts of Matrimonie either both muſt be bound, or equall election of diſagreement giuen to both, and ſo è conuerſo, if the woman be of the age of conſent, and the man vnder.

a tiel mariage, ou diſagreer.

man, may agree or diſagree to ſuch mariage.

Sect. 105.

13.E.1.gard.137. Britton.fol.169.acc.

IT is a maxime in law. Quod Dominus non maritabit minorem in cuſtodia ſua niſi ſemel, And another ſaith, Si ſemel legitimè nupt' fuer', &c. poſtmodum non tenebuntur ſub cuſtodia dominorum eſſe. Albeit this mariage is de facto, and not de iure, and though the diſagreement diſſolueth it ab initio, yet the Lord ſhall neuer haue the mariage of him.

Glanvil.lib.7.cap.12.

27.H.6.gard.118.

And ſo if the Gardein marieth his Ward to a woman, and after the mariage is diſſolued by reaſon of a precontract, yet the Gardein ſhall neuer haue the mariage of the ward againe.

27.H.6.gard.118

But if one rauiſheth a Ward from the Lord, and marieth him within the age of conſent, in that caſe if the Lord taketh again his ward, and hee at the age of conſent diſagreeth to the mariage, the Lord ſhall haue the mariage of him, for hee neuer had it before.

27.H.6.gard.118.

So likewiſe, if the Anceſtor marieth his heire apparant infra annos nubiles, and dieth his heire within age, the ward diſagreeth, the Gardein ſhall haue the wardſhip of him. The ſame Law it is in the ſame caſe, if the wife dieth before the age of conſent, the Lord ſhall haue the mariage of the heire.

F.N.B.143.

7.H.6.11.

CET ſi la gardeine ẽ chiualrie marie vn foits le garde deins lage de 14. ans, a vn feme, & puis ſil al age de 14. ans diſagree a le mariage, il eſt dit per aſcuns, que lenfant neſt pas tenuz per le ley deſtre auterfoits marie per ſon gardeine pur ceo que le gardeine auoit vn foits le mariage de luy, & pur ceo il fuit hors de ſon garde, quant al garde ď ſon corps. Et quant il auoit vn foits le mariage ď luy & vn foits fuit hors de ſon garde, il nauera plus auant le mariage de luy.

AND if the gardeine in Chiualrie doth once marie the Ward within his age of 14. yeares to a woman, & if afterward at his age of 14. yeares he diſagree to the mariage, it is ſaid by ſome, that the Infant is not tied by the Law, to bee againe maried by his Gardein, for that the Gardein had once the mariage of him, and becauſe hee was once out of his ward, as to the ward of his bodie. And when hee had once the mariage of him, and hee was once out of his wardſhip, he ſhall no more haue the mariage of him.

(a) 30.E.1.gard.156. 12.E.1.gard.138. 21.E.3.19. 20.E.3.gard.41. Temps E.1.ibidem.128. 7.H.6.45. 7.H.6.11. Vide prerogat. Regis cap.6. 13.H.3.gard.147. Stauf.prer.26.27.

(b) 27.H.6.gard.118. F.N.B.143.m. 19.E.3 iudgement 123. 45.E.3.16.

(c) 4.E.3.tit.action ſur le ſtatut.38. and the Bookes there ſaid.

And ſo note a diuerſitie when the Ward is maried by the Anceſtor or by a Rauiſher, and when by the Gardein himſelfe. (a) For if the Anceſtor marie his heire apparant infra annos nubiles and dieth: In this caſe if the mariage be diſſolued by diſagreement, either of the ward or of his wife, the Gardein ſhall haue the mariage of him. (b) And ſo it is if a Rauiſhor marie a Ward infra annos nubiles, and the mariage is diſſolued vt ſupra, the Gardein ſhall haue the mariage. If the heire male in ward of the age of ten yeares be maried without the conſent of the Lord, he may tender vnto the heire infra annos nubiles a mariage, albeit he be ſo maried. and if he refuſe and agree to the former mariage, the Lord ſhall haue the forfeiture of his mariage, as it hath beene holden, [redacted] But otherwiſe it is (c) (ſaith Littleton) where the Gardein himſelfe marieth the Ward, vt ſupra, And the reaſon of the diuerſitie is, becauſe in this caſe the Gardein had once the mariage of him, but ſo had not he in either of the other caſes, and it is a maxime in Law Quod Dominus non maritabit pupillum niſi ſemel.

It appeareth vpon consideration of all the bookes aforesaid that where the Ancestor marrieth his heire apparant within the age of consent, and dieth, the enfant still being within the age of Consent, the Lord may take the infant (if he will) into his possession, in respect the infant may disagree to the marriage, and if the infant be deteyned from him, he shall recouer him in a Writ of Rauishment of ward, and thereupon haue the infant deliuered to him. (d) But if the Ancestor marrieth his heire apparant infra annos nubiles, and dieth his heire being infra annos nubiles, and after age of Consent the heire agreeth to the marriage, neither the King nor the Lord shall haue the marriage, for now it is a marriage ab initio, and there nede no other marriage.

(d) 7.H.6.11 alias 9 the booke at age.

Section 106.

¶ Item meisme le maner est, si le gardein luy marie, & la feme deuie esteant lenfant deins lage de xiiii. ans, ou xxi.

IN the same manner it is if the gardian marry him & the wife die the infant being within the age of 14. yeares or 21.

¶ This Littleton addeth because hee spake in the case next before of a disagreement by the infant, here hee saith, that if the wife die, the infant being within the age of consent.

Sect. 107.

¶ Et que tiel enfant poit disagreer a tiel mariage, quant il vient al age de xiiii. ans, il est proue per les parolx del statute de Merton Cap. 6. que issint dit.

AND that such infant may disagree to such marriage, when he comes to the age of 14. yeares, it is proued by the words of the statute of Merton cap. 6. which saith thus:

De dominis qui maritauerint illos quos habent in custodia sua, villanis, vel alijs, sicut burgensibus vbi disparagentur, si talis hæres fuerit infra 14. *annos, & talis ætatis quod matrimonium consentire non possit, tunc si parentes illi conquerantur, dominus amittat custodiam illam vsque ad ætatem hæredis, & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis infra ætatem existent', secundum dispositionem parentum propter dedecus ei impositum. Si autem fuerit* 14. ans & vltra, *quod consentire possit, & tali matrimonio consenserit, nulla sequatur pœna.*

¶ Et issint est proue p meisne le estatute, que nul disparagement est mes tou-celluy que est en garde est marie deins lage de xiiii. ans.

And so it is proued by the same statute, that there is no disparagement but where hee which is in Ward is maried within the age of 14. yeares.

¶ *Estatut de Merton.* So called because the Parliament was holden at Merton.

¶ *Et que tiel enfant poit disagreer, &c. il est proue, &c.* Note the time of disagreement is set downe by act of Parliament, and so obserued by Littleton, who seekes no other proofe therein then by the Law of England.

Merton. ca. 6.

¶ *Vbi disparagentur.* Disparagement, disparagatio commeth of the verbe disparago, and that of dispar, and ago.

Now it is necessary to bee vnderstood what disparagements there be for the which the heire may refuse.

And of such disparagements there be foure kindes. The first propter vitium animi, as an Ideot, non compos mentis, a Lunatique, &c. The second propter vitium sanguinis, as first a Villeine, 2. Burgensis. 3. The sonne or daughter of a person attainted of treason or felony, albeit pardoned, for the blood is corrupted. 4. A Bastard. 5. An Alien or the childe of an Alien. Burgensis is a man of trade, as an Haberdasher, a Draper

Bracton lib. 2. fol. 91. Britton fol. 169. Flet. lib. 1. cap. 12. Mirror ca. 2. §. 17. Rot. Parl. 18. E. 1. fo. 9. The daughter of Neud maried to the sonne of Thos of Weyland after his attainder.

Draper or the like, (and this agreeth with the Ciuill Law, Patricij cum plebis matrimonia ne contrahant.) whereof Glanuill speaketh thus. Si vero fuerit filius burgensis ætatem habere tunc intelligitur, quando discrete sciuerit denarios numerare, & pannos vlnare & alia paterna negotia similiter exercere.

The third propter vitium corporis, as first de membris, hauing but one hand, one foot, one eye, &c. Secondly, deformitie, as to looke a squint, a cripple, halt, lame, decrepit, crooked, &c. Thirdly, Priuation, as blind, deafe, dumbe, &c. Fourthly, Disease horrible, as Leprosie, Palsy, Dropsey, or such like diseases. Fiftly, great and continuall infirmitie, as a Consumption and such like. Sixtly, Impotencie to haue children in respect either of age past children, or so tender yeares as there is too great disparitie, or for naturall disabilitie or impediment or such like. Seuenthly, Defloured of her Virginitie.

1.E.6.cap.12.

(d) Vide Sect.109. F.N.B.149.

The fourth kind of disparagement was propter iacturam priuilegij, &c. as to marie the heire to a widow, whereby he should by reason of the Bigamie haue lost the benefit of his Cleargie, whereby he might saue his life, but now the exception of Bigamie in that case is ousted by the (d) Statute. And Littleton saith that there bee many other disparagements which are not specified in the said Statute, for those two mentioned are put but for examples. In a word it must be competens maritagium absque disparagatione.

¶ *Si talis heres fuerit infra* 14. *annos, & talis ætatis quod matrimonio consentire non possit, &c.* Note albeit the Ward where hee is disparaged may disagree at his age of fourteene yeares, yet the Law doth so abhorre the odious dealing of the Gardein, to whom the custodie of the heire is committed, and his horrible profanation of honorable mariage, the only ligament of mens Inheritances as it inflicteth a great punishment vpon the Lord in this case, albeit the mariage bee not perfect, but auoidable by disagreement.

¶ *Tunc si parentes illi conquerantur.* Littleton in the next Section expoundeth these words in this manner, viz. Si parentes conquerantur, i. Si parentes inter eos lamententur, quæ est tant a dire, que si les Cosens de tiel infant ont cause de faire lamentation ou complaint pur le hont fait lour Cosen issint disparage, quel est in manner vn hont a eux. Parens est nomen generale ad omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat custodiam illam vsque ad ætatem hæredis & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis, &c.* Here followeth the penaltie.

First, amittat custodiam, that is, the whole benefit of the wardship. But in this case if the Gardein hath granted the wardship of the Land to another bona fide, and after, the heire is disparaged, the Grantee shall not forfeit his interest, for the Statute is (Dominus amittat custodiam.)

Secondly, Et omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis secundum dispositionem parentum. These words are expounded by Littleton which needeth no further explanation: Now where readers vpon this Statute, haue put a case, that if the Tenant hath issue a daughter, his wife enseint with a sonne and dieth, the Lord doth disparage the daughter before the age of twelue yeares, the sonne is borne, the daughter disagrees, the sonne dieth, the daughter within the age of fourteene, she shall be in ward againe. This case is not warranted by this Statute, for this Statute extends not to the heires female.

Vide the second part of the Institutes. Merton cap.5.6. 35.H.6.53.

If the Tenant make a Lease to A. for life, the remainder to B. in fee, the Tenant for life surrenders vpon condition, B. dieth his heire within age, the Lord disparages the heire, Tenant for life entreth for the condition broken and dieth, the heire shall be out of ward, for that he claymeth as heire to one man. But if after the disparagement, lands discend from another ancestor to the Ward so disparaged, he shall be in Ward for those Lands.

If two Joyntenants be of a ward, and the one disparageth the heire, both shall lose the Wardship, for the words be & omne commodum, &c.

¶ *Si autem fuerit* 14. *annorum & vltra, &c. nulla sequatur pœna.* By which it appeareth (as Littleton obserueth) that there is no disparagement but where the Ward is maried within the age of fourteene.

Britton. fol.169.acc..

Section 108.

¶ *Estatute de magna Charta.*

9.H.3.

Though it be in forme of a

¶ Nota que il soloit estre question, coment ceux

NOte, it hath beene a question how

these words shall bee pa-

parolx ſerront entendes, Si parentes conquerantur, &c. * Et il ſemble a aſcuns q̃ conſideront leſtatute de Magna Charta que voit, Quod hæred' maritentur abſque diſparagatione, &c. Sur quel cel Statute de Merton ſur tiel point eſt foundue, Que nul action poit eſtre prís ſur cel Statute, entant que il ne fuit vnques view ne oye, q̃ aſcun actiõ fuit porte ſur cel Statute de Merton p cel diſparagement enuers le gardeine pur ceſt matter auandit, &c. Et ſi aſcun action puiſſoit eſtre prſe ſur tiel matter, il ſerra entendue aſcun foits eſtre miſe en vre. *Et nota que ceux parolx, ſerront entendes, Si parentes conquerantur, id eſt ſi parentes inter eos lamententur, que eſt taunt adire, que ſi les couſins de tiel enfant ont cauſe de faire lamentation ou complaint enter eux pur le hont fait a lour Couſin iſſint diſparage, quel eſt en maner vn hont a eux, donques puit le prochein vnderſtood. (*Si parentes conquerãtur.*) * And it ſeemeth to ſome who conſidering the ſtatute of *Magna carta*, which willeth, *Quod hæredes maritentur abſque diſparagatione, &c.* Vpon which, this ſtatute of *Merton* vpon this point is founded, That no action can be brought vpon this ſtatute, inſomuch as it was neuer ſeene or heard that any action was brought vpon the ſtatute of *Merton* for this diſparagement againſt the gardian for the matter aforeſaid, &c. And if any action might haue beene brought for this matter, it ſhall bee intended that at ſome time it would haue beene put in vre. * And note that theſe words ſhall bee vnderſtood thus, *Si parentes conquerantur, id eſt ſi parentes inter eos lamententur*, which is as much to ſay, as if the couſins of ſuch infant haue cauſe to make lamentation or complaint amongſt themſelues for the ſhame done to their couſin ſo diſparaged, which in manner is a ſhame to them, then may the next

Charter, yet being granted by aſſent and authoritie of Parliament Littleton here ſaith it is a ſtatute. *Vid. lib. 8. the Princes caſe.*

This Parliamentary Charter hath diuers appellations in Law. Here it is called Magna Carta, not for the length or largeneſſe of it (for it is but ſhort in reſpect of the Charters granted of priuate things to priuate perſons now adayes being (Elephantinæ cartæ) but it is called the great Charter in reſpect of the great weightineſſe & weighty greatneſſe of the matter contained in it in few words, being the fountaine of all the fundamentall Lawes of the Realme, and therefore it may truely be ſaid of it, that it is magnum in parvo. It is in our bookes called Carta libertatum et comunis libertas Angliæ & libertates Angliæ. Carta de libertatibus, magna carta, &c. And well may the Lawes of England be called libertates, quia liberos faciunt. Magna fuit quondam magnæ reverentia Cartæ. *Bracton. 414. & 191. Fleta lib. 2. cap. 48. & lib. 3. cap. 3. Mirror cap. 2. §. 18. Britton fol. 177. b.*

This ſtatute of Magna Carta, is but a Confirmation or reſtitution of the Common Law, as in the ſtatute called Confirmatio cartarum, Anno 25. E. 1. it appeareth by the opinion of all the Juſtices; and in 5. H. 3. tit. Mord. 53. Magna Carta is there vouched, for there it appeareth that King Iohn had granted the like Charter of renouation of the ancient Lawes. *25. E. 1. 5. H. 3. Mord. 53. Matth. Paris, 246. 276. 348.*

This ſtatute of Magna carta hath beene confirmed aboue 30. times, and commanded to be put in execution. By the ſtatute of 25. E. 1. ca. 2. iudgements giuen againſt any points of the Charters of Magna Carta or Carta de foreſta are adiudged voide. And by the ſtatute of 42. E. 3. ca. 3. if any ſtatute be made againſt either of theſe Charters it ſhall be voide. *25. E. 1. ca. 2. 42. E. 3. ca. 3.*

¶ *Sur leſtatute de magna carta leſtatute de Merton eſt foundue ſur tiel*

tiel point, viz. Quod hæredes maritentur absque disparagatione.

¶ *Foundue,* So as Magna Carta is the foundation of other Acts of Parliament. This Act extendeth as well to females as to males.

¶ *Nul action poet este prise sur cel statute, intant que il ne vnques fuit view ou oye, &c. Et si ascun action puissoit este prise sur cest matter il serra intend a ascun foits estre mise in vre.*

Hereby it appeareth how safe it is to be guided by iudiciall precedents the rule being good, Periculosum existimo quod bonorum virorum non comprobatur exemplo. And as vsage is a good interpreter of Lawes, so non vsage where there is no example is a great intendment, that the Law will not beare it, for saith Littleton, If any action might haue beene grounded vpon such matter, it shall be intended that sometime it should haue beene put in vre. Not that an Act of Parliament by non Vser can be antiquated or lose his force, but that it may be expounded or declared how the Act is to be vnderstood.

Vid. Petitionem eram domino regi in Parliamento, fo. 3.18.E.1.

39.H.6.39.per Asston. 6.Eliz.Dier,229. 22.Eliz. Dier. Nullum breue derrere de audicio in 5.part.quia nullum breue repert ur. 3.E.3.50.11.H.4.7.& 38.

¶ *Si parentes conquerantur.* Of this sufficient hath beene said before.

¶ *Si les Cousins.* Here Littleton expoundeth parents to be his cousins, vnder which name of cousins Littleton includeth vncles and other cousins, who when the father is dead are in loco parentum.

Vid. Lestatute de Merlebridge ca. 17. In custodia parentum.

¶ *Ont cause a faire lamentation, &c.* Note if they haue cause to make lamentation, it sufficeth though they neuer complaine.

¶ *Pur le hont fait a lour cousin.* For when their cousin is disparaged in his marriage, it is not only a shame and infamy to the heire, but in him to all his blud and kindred.

¶ *Donques poet le procheine cousin a que le enheritance ne poet discender enter & ouster le gardein in chiualrie.*

This is worthy the obseruation for the words of the statute are generall Secundum dispositionem parentum, and the construction thereof shall be according to the reason of the Common Law, for the next cousin to whom the inheritance cannot discend shall enter and oust the gardian, and shall be in place of a gardian, as it is in case of a gardian in Socage.

¶ *Et si il ne voille, vn auter cousin del enfant poet ceo faire.* Still pursuing the reason of the Common Law in case of gardian in Socage.

¶ *Et les issues & proffits prender al vse del enfant, &c.* This is so euident as it needeth no explication.

¶ *Ou auterment lenfant deins age poet enter luy mesme & ouste le gardein.* If none of the cousins aforesaid will enter, then the heire himselfe may enter. In all which the reason of the Common Law is pursued. But what if the heire be disparaged and the next of kin doth enter, and when the heire commeth to 14. he agreeth to the marriage, yet shall not this giue any aduantage to the Lord, for that he had lost the wardship before.

cheín cousine a que lenheritage ne puit discender, enter & ouster le gardein en chiualry. Et sil ne voile, vn auter cousin del enfant poit ceo faire, & les issues & pfits prender al vse del enfant, & de ceo render accõpt al enfant, quant il vient a son plein age: ou autrmt lenfant deins age poit enter luy mesme, & ouster le gardein, &c. Sed quære de hoc.

Cousin to whom the inheritance cannot discend, enter and ouste the gardein in Chiualrie. And if he will not, another cousin of the infant may doe this, and take the issues & proffits to the vse of the infant and of this to render an accoũt to the infant whẽ hee comes to his full age: or otherwise the infant within age may enter himselfe and ouste the gardein, &c. *Sed quære de hoc.*

Sect. 109.

¶ Of this sufficient hath beene said before.

¶ Item mults auters diuers disparagemẽts y sont, que ne sont speciffies en mesme lestatute. Come si lheire que est en gard est mary a vn que nad forsq; vn pee, ou forsq; vn maine, ou que est deforme, decrepite, ou ayant horrible diseale, ou graund & continual infirmity: Et (si soit heire male) si soit marry a feme que est passe lage denfanter. Et mults auters causes de disparagements sont Sed de illis quære car il est bon matter dapprender.

ALso there be many and diuers other disparagements, which are not specified in the same statute. As if the heire which is in Ward be married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or hauing some horrible disease or great and continuall infirmity. And (if he be an heire male) if hee be married to a woman past the age of childebearing. And there be other causes of disparagement, but inquire of them, for it is a good matter to vnderstand.

Sect. 110.

¶ Et des heires males que sont deins lage de 21. ans apres le mort lour ancester nient marries, en tiel cas le sñr auera le mariage de tiel heire, & auera temps & space de tender a luy conuenable mariage sans disparagement deins ñ le temps de 21. ans. Et est ascauoir, que lheire en tiel case poit eslier sil voit eẽ marry ou non, mes si le Sñr que est appel gardein en chiualry a tiel heire tender couẽable mariage deins lage de 21. ans sans disparagement, & lheire ceo refuse, & ne soy marie deyns le dit age,

AND of heires males which bee within the age of 21. yeares after the decease of their Ancestor and not married, In this case the Lord shall haue the mariage of such heire, and hee shall haue time and space to tender to him couenable mariage without disparagement within the said time of 21. yeares. And it is to bee vnderstood, that the heire in this case may chuse whither hee he will be married or no, but if the Lord which is called gardian in chualry tenders to such heire couenable mariage within the age of 21. yeares without dispa-

¶ *De tender a luy conuenable mariage, &c.* But it is in the election of the Lord whether for the single value the Lord will tender a mariage or no, for he shall haue the single value without any tender.

Lib.6 fo.70 La. Darcies case. Vid. Britton, fol. 169.

And of this there needeth no other explication. The value of the mariage of such an heire is according to the valuation by lawfull triall or as much as another had before offered to giue for the same without fraude and couyn.

Merton, cap. 6. 18.E.3.18.

¶ *Le heire en tiel case poet eslier sil voet este marie, ou non, &c.* And so on the other side though there be a tender made of a couenable mariage without disparagement. yet the heire may refuse, for in euery mariage there

there must bee a free consent.

¶ *Si tiel heire.* That is, if such an heire to whom a tender hath been made by the Lord, and by whom a refusall haue beene made, if such an heire afterwards marieth another within age, he shall forfeit double the value, but if hee before any tender marieth himselfe within age, hee shall pay but the single value of the mariage.

Neither the single value nor the double value shall bee recouered against the heire, but after his full age, but for both these the Lord hath a double remedie: viz. an Action as is aforesaid, or the Lord may retaine the land after full age for his satisfaction of both, with this difference that in the case of the single value the taking of the profits shall not

donques le gardeine aūra l'value del mariage del tiel heire male, mes si tiel heire luy n̄ marie deins lage de 21. ans encounter la volunt le gardein en chiualrie donqz le gardein aūa le double value del mar̄ per force de lestat ō Merton **auantdit come en n̄ lestat est compriſe pluis a pleine.**

ragement, & the heire refuseth this, and doth not marrie himselfe within the said age, then the Gardein shall haue the value of the mariage of such heire male, but if such heire marieth himself within the age of 21. yeares against the will of the Gardein in Chiualrie, then the Gardein shall haue the double value of the Marriage by force of the Statute of *Merton* aforesaid, as in the same Statute is more fully at large compriſed.

be accounted parcell of the value but as a gage or pledge till the heire doe satisfie him of the single value, but in case of the double value, the perception of the profits shall be taken in satisfaction of the double value, for the Statute of Merton which giueth the forfeiture saith, Dominus teneat terram, &c. per tantum tempus quod inde percipere possit duplicem valorem maritagii, which words (quod inde, &c.) proueth that the taking of the profits shall goe in satisfaction: but in case of the single value, vntill the heire doth satisfie the Lord of the same.

No forfeiture of mariage is giuen by the said Statute of Merton, of an heire female, as appeareth by the said Act, neither at the Common Law could the Lord haue holden the land of the heire female after fourteene yeares for the value.

Stat. de Merton. cap. 6.
2. E 2. acc. sur lestat. 43.
3. E. 2. ibid. 27.
16. E. 3. ibid. 14. 18. E. 3. 18.
Temps E. 1. acc. sur l'stat.
43. E. 3. 21. 27. H. 8. 4.
& stat. de Merton. cap. 7.
35. H. 6. tit. gard. 71. Lib. 6.
fol. 71. Lord Darcies case.

Section III.

Lib. 4. fol. 88. in Lutterel's case. Lib. 6. fol. 20. a. Gregories case.
19. R. 2. gard. 195

Per *Castle gard. Wardum castri, seu castle-gardum, seu castri-gardum.* He that holdeth by Castle-gard, holdeth by Knights Seruice, but not by Escuage, for Escuage is due when the King maketh a Voyage Royall out of this Realme (as hath been said) and the Tenant maketh default, but Castle gard is to be done within the Realme, & without any Voyage royall.

Also a certaine tearme is appointed for the Seruice of the Tenant that holdeth by Escuage, but no certaine terme by Law for him that holdeth by Castle gard. Vide in the Title of Grand Seriantie Sect. Hereof come

Item diuers tenants teignont de lour Seignior p̄ seruice de chiualer, & vncore ils ne teignont per Escuage, ne paieront escuage, come ceux que teignont de lour Seigniors per castle garde, cestascauoire, a garder vn tower del castle lour Seignior, ou vn huis ou vn auter lieu del castle per reasonable garnishment, quant lour Seigni-

Also diuers Tenāts hold of their Lords by Knights seruice, and yet they hold not by Escuage, neither shall they pay Escuage. As they which hold of their Lords by Castleward, that is to say, to ward a tower of the Castle of their Lord, or a doore or some other place of the Castle vpon reasonable warning, when their Lords heare that the enemies wil come,

ors

ors oyont que enemies voylent venir ou sont venus en Engleterre. Et en plusors autres cases home poit tener per seruice de chiualer, & vncore il ne tient per escuage, ne payera escuage, sicome serra dit en le tenure per Graund Serieanty. Mes en touts cases ou home tient p seruice de chiualer, tiel seruice trait al seignior garde & mariage.

or are come in England. And in many other Cases a man may hold by Knights Seruice, and yet hee holdeth not by Escuage nor shall pay Escuage, as shall bee said in the tenure by Grand Seriantie. But in all Cases where a man holds by Knights Seruice, this Seruice draweth to the Lord ward and mariage.

Castellani, or Constabularij castri, for Keepers or Constables of a Castle.

Vide Mag. Cart. cap. 19. 20. W. 1. cap. 7. Bract. lib. 5. fol. 363. Flet. lib. 2. cap. 43.

¶ *A garder vn tower del Castle, &c.* A Tower, or a Doore, or a Bridge, or a Sconce, or some other certaine part of the Castle, for the tenure must be certaine. And this may be done by the Tenant himselfe or his Deputie.

Magna Cart. cap. 20.

¶ *Del Seignior.* for it cannot bee of a Castle of another.

Lord and Tenant by Castlegard, the Lord granteth ouer his seigniory to another, (a) the Castle gard is gone because the Grantee hath not the Castle. (b) For the same reason it is, that if one holdeth of mee as of my Manor of D. by fealtie and suite of Court, if I grant ouer the seruices of this Tenant, the suite is gone because the Grantee hath not the Manor. (c) But if the Castle be wholy ruinated, Si Castrum sit penitus dirutum, yet the tenure remayneth by Knights Seruice, and it goeth in benefit of the Tenant, as to the garding of the Castle vntill it be reedified. But Ward and Mariage belongeth to the Lord in the meane time. For Littleton in the end of this Section putteth it for a generall rule in all cases where a man holdeth by Knights Seruice, it draweth Ward and Mariage.

(a) *Temp. E. 2. tit. Aff. 399. 31. E. 1. tit. Aff. 441.*

(b) *17. E. 3. 65. 72. 4. E. 3. 42.*

(c) *Lib. 4. fo. 88. Lutterel. case. 3. H. 8. Bendloes. Capels case. 4. E. 3. 55.*

If the Tenant make default in garding of the Castle, the Lord may distraine for it, and recouer satisfaction in damages.

¶ *Per reasonable garnishment.* This warning must bee giuen by the Lord or some other for him, and the Tenant need not to stirre vntill he haue such warning.

¶ *Enemies.* which is to be vnderstood of any manner of enemies whatsoeuer. And though Littleton speakes of enemies, yet it seemeth that to keepe a Castle in time of Insurrection and Rebellion (albeit in propriety of speech Rebels are no enemies) is a tenure by Knights Seruice. Vide Hill 8. E. 1. Midd. Rott 86.

¶ *Voilent vener.* For preparation is to be made vpon warning before the enemie be come indeed into England. This appeareth to be in time of hostilitie and warre, or for preparation therefore. But a tenure to keepe a Castle in time of peace only is no Knights Seruice.

If the Tenant by Castle gard doe serue the King in his warre, hee shall bee discharged against the Lord according to the quantitie of the time that he was in the Kings host.

Fleta speaketh of an old word called Wardwite and (saith he) significat quietanciam misericordiæ in casu quo non inuenerit quis hominem ad Wardam faciendam in Castro.

Fleta. lib. 1. cap. 42.

Sect. 112.

¶ Et si vn tenant que tient de son seignior per seruice de entier fee de chiualer mourust, son heire donqs esteãt de plein age .s. de 21. ans,

And if a Tenant which holdeth of his Lord by the seruice of a whole Knights fee dieth, his heire then being of full age s. of 21. yeares, then

¶ *Releife, releuium.* This word is deriued from the originall before.

Vide Sect. 103.

Nota, Reliefe (a) is no seruice but an improuement of the seruice, or an incident to the seruice, for the which the Lord may distreine but cannot haue an Action of Debt, but

(a) *Temp. E. 1. relefe. 13. 41. E. 3. 22. 4. E. 2. monstr. 210. 7. H. 6. 13. 22. H. 8. Ro. 528. 34. E. 1. monstr. 234.*

but his Executors or Administrators may haue an Action of Debt, and cannot distraine.

(b) *Stat. de 1. E. 2. de militibus. Vide lib. 9. fol. 124. Ambr. Lowes case.*

And it (b) is to be vnderstood that fœdum militis, a Knights Fee, consisteth of twentie pound land, and hee payeth for his relefe for a whole Knights fee, the fourth part of his fee viz. fiue pound, and so according to the rate.

donque le Seignior auera C. s. pur relefe, & del heire celuy que tient per le moitie dun fee de chiualer L. s. & de celuy que tient per l' quart part d fee dun chiualer 25. s. & sic que pluis, pluis, & que meins, meins.

the Lord shall haue C. s. for a relefe, and of the heire of him which holds by the moitie of a Knights fee 50. s. and of him which holds by the fourth part of a Knights fee 25. s. and so he which holds more, more, and which lesse, lesse.

Baronia, a Baronie, or a Barons Fee consisteth of thirteene Knights fees, and the third part of a Knights fee which amounteth to foure hundred Markes per annum, and the Baron for an entire Baronie payeth for his relefe an hundred Markes, which is the fourth part of the value of his Baronie.

Comitatus, an Earledome, or an Earles fee consisteth of a Baronie, and the third part of a Baronie, which includeth twentie Knights fees amounting to foure hundred pound land per annum, and he payeth for his relefe for an entire Earldome the fourth part of his reuenue, and that is a hundred pound. All which appeareth by the Statute of Magna Charta, cap. 2. made in the ninth yeare of Henrie the third, at which time there was neither Duke, Marquesse nor Viscount in England as before is said. But there be Presidents in the Exchequer that a Dukedome consisting of two Earledomes, viz. eight hundred pound land by the yeare payeth two hundred pound, and a Marquesse consisting of two Baronies, viz. eight hundred Markes land per annum, and of an Earldome and a halfe payeth two hundred Markes for his relefe. What the Viscount should pay in certaine I haue not heard. Before the making of the Statute of Magna Charta the King had rationabile releuium of Noblemen, and it was not reduced to any certaintie, yet ought it to haue beene reasonable and not excessiue.

Glanuil. lib. 9. cap. 4. 6. Bracton. lib. 2. fol. 83. Britton. fol. 1-8. Ockam. 42. F. N. B. 83. 256. Fleta lib. 3. cap. 17. Magna Charta cap. 2.

I haue seene the Record of a Charter made in 20. H. 6. to Henry Beauchampe, Earle of Warwicke, whereby he was created King of the Ile of Wight, to him and the heires males of his bodie, his relefe was incertaine, and not limited by the Statute of Magna Charta.

Vide Bracton fol. 84. 14. H. 4. in recordo longo. 10. H. 7. 19. 20. E. 3. Ass. 122. tit. auowrie 126. 18. Ass. pl. vltimo. 22. E. 3. 8.

It is to be obserued that the words of the Statute of Magna Charta, be Hæres Comitis de Comitatu integro & hæres Baronis de Baronia integra, &c. Now what an entire Earledome, and an entire Baronie is hath beene declared before.

It is also to be obserued that at and before the Statute of Magna Charta, all Earledomes and Baronies were deriued from the Crowne, and were holden by the King in Capite, and and the King would not suffer them to be deuided, or seuered. And such entire Earledomes, and entire Baronies are within the Statute, but at this day Earles and Barons are without such Earledomes and Baronies of the Kings gift in chiefe. For at the Creation of an Earle he hath sometimes an Annuitie granted vnto him, & sometime nothing, so as such Earles and Barons so created are clerely out of the Statute of Magna Charta, and are to pay such relefes as other men that hold of the King in Capite. For as the heire of a Knight shall not pay relefe vnlesse he hath a Knights fee, &c. so neither the Earle nor Baron shall pay any relefe by this Statute, vnlesse he hath an Earledome, &c. or Barony, &c.

16. E. 3. Eschaeye 2. 46. E. 3. forfeiture 18.

C *Son heire de pleine age .s. de 21. ans.* And yet in some case the heire shall pay relefe when he was within age at the time of the death of his Ancestor. As if a man holdeth lands of the King by Knights Seruice in Capite, and of a common person other lands by Knights Seruice, and dieth his heire being within age, the King hath all in ward by his Prerogatiue vntill the full age of the heire. In this case the heire shall pay relefe to the other Lord, for that the King had the wardship of bodie and lands. And the Lord vpon euery Discent ought to haue either wardship or Relefe.

24. E. 3. 24. 26. H. 8. 32. H. 8. cap. 2. in fine.

1. E. 2. 6. Pl. Com. 229. 33. E. 3. tit. gard. Statham.

But if there be Lord and Tenant by Knights Seruice, and the Tenant dieth, his heire being within age, the Lord wayueth his wardship as he may, and taketh himselfe to his Seignior, in this case the Lord shall not haue relefe at his full age because hee might haue had the wardship of the bodie and land. Lord and Tenant of two Manors by diuers tenures by Knights Seruice, the Tenant is disseised of the one, and the Disseisor dieth seised, and the Tenant dieth seised of the other his heire within age, the Lord seised the bodie and lands of that Manor and after the heire at his full age recouereth the other Manor against the heire of the Disseisor, he shall pay relefe for that Manor, and so one Lord of the heire of one Tenant shall haue both wardship during his minoritie and relefe at his full age.

¶ *Son heire.* (k) **And yet the ſucceſſor of a Biſhop or Abbot may pay** reliefe by preſcription or grant.

If the tenant infeoffeth his heire apparant by colluſion, and dieth, (l) his heire of full age it is a queſtion in our bookes, whether he ſhall haue reliefe either by the Common Law, or by the ſtatute of Marlebridge.ca.6. But now the ſtatute (m) of 13.Eliz.ca.5. hath cleered that queſtion, and that the Lord ſhall haue reliefe where the conueyance is made to any perſon by colluſion, &c.

(k) 3.E.3.13.76. 8.R.2.reliefe,14. 3.H.4.2. 2 E.3. ...uvrie.124.
(l) 39.E.3.tit. Reliefe. 24.E.3.24.E.3.Reliefe 11. Bracton lib.2.85.
(m) 13.Eliz.ca 5.

Section 113.

This is euident, and needeth no explanation.

¶ Item home poit ten̄ ſon fre de ſon Sn̄r per le ſeruice de deux fees de chiualer, & donque lheire eſteant de pleine age al temps de mort ſon auncestre paiera a ſon Sn̄r x.l. pur reliefe.

Alſo a man may hold his land of his Lord by the ſeruice of two Knights fees,& then the heire being of full age at the time of the death of his Anceſter ſhall pay to his Lord x.pound for reliefe.

Sect. 114.

¶ Nota ſi ſoit aiel, pier, & fits, & ſa mere mozuſt viuant le pier de le fits & puis laiel que tient ſa terre p ſeruice de chiualer moruſt ſeiſie, & ſa terre diſcendiſt al fits la mere, come heire al aiel q̄ eſt deins age: en ceſt cas la Sn̄r auera le garde de la terre, mes nemy le garde del corps del heire, pur ceo que nul ſera en garō de ſon corps a aſcun Sn̄r viuant ſon pier pur ceo que le pier durāt ſon vie auera le mariage de ſon heire apparant, & nemy le Sn̄r. Autrement eſt ou le pier eſt mort viuant la mere, lou le terre tenus en chi-

NOte, if Grandfather, father and ſonne, and the mother dieth liuing the father of the ſonne, and after the grandfather which holds his land by Knights ſeruice dieth ſeiſed, and his land diſcend to the ſonne of the mother as heire to the grandfather who is within age: In this caſe, the Lord ſhall haue the Wardſhip of the land,but not of the body of the heire, becauſe none ſhall be in ward of his body to any Lord,liuing his father,for the father during his life ſhall haue the mariage of his heire apparant, & not the Lord.Otherwiſe it is where the father dieth liuing the mother,

¶ *Fitz.* Yet the father ſhall haue the mariage of his Daughter if ſhe bee his heire apparant, and Littletons reaſon extendeth to the Daughter,for that (ſaith he) the father ſhall haue the Wardſhip of his heire apparant, within which words the Daughter is included, ſo long as ſhe continueth heire apparant.

Bl ta lib.1. cap.4. 16.E.3.diſcuſſin 6. 31.E.1.gard 154. 8.E.2.treſp.235. F.N.B.243. Ambroſia Gorges caſe. lib.6 fo.22.

¶ *Le ſeignior auera le garde del terre.* Note that albeit in this caſe the Law doth giue the cuſtody of the body of the father, and barreth the Lord thereof, yet the Lord ſhall haue the Wardſhip of the Land by force of the tenure at the firſt creation thereof. And ſo it is if the father marieth his heire within age and dieth, yet the Lord ſhall haue the wardſhip of the land.

¶ *Viuant ſon pier.* This doth not extend to any collaterall heire, but only to the ſonne or daughter being heire apparant, for albeit a man ſhall haue an action of treſpaſſe, Quare conſanguineum & hæredem cæpit, and albeit the words be Cujus maritagium ad ipſum pertinet, becauſe the well beſtowing of his

9 E.2.18.E.3.25.29.Aſſ 35. 29.E.3.37. 31.E.3.bar.248

32.E.3.Gard 32.30.E.3.17. 31.H.6.55.12.H.4.16. F.N.B.143.31.E.3.Br.357 9.E.4.53.

his heire apparant in mariage is a great establishment of his house, yet that is to be vnderstood as against a wrong doer but not against a gardian in Chiualrie, and the mother

uairy discendist al fits de part son pier, &c.

where the land holden in chiualry discends to the son on the part of the father, &c.

shall haue the like writ for taking away of her sonne and heire apparent: and yet the mother

V.Flet.l.1.c.6.See W.2.c 35

shall not barre the Lord by Knights seruice, of his wardship of the bodie, as Littleton here saith, Qui tamen ex filia tua nascitur in potestate tua non est, sed patris eius.

¶ *A ascun seignior.* **Put the case there is Lord,** & Feme **Tenant** by Knights seruice of a Carue of land, the Feme maketh a feoffement in fee vpon condition, and taketh the Lord to husband, and haue issue a sonne, the wife dieth, the issue entreth for the condition broken, the Lord entreth into the land as Gardeine by Knights seruice, and maketh his Executors, and dieth: in this case the Executors shall haue the wardship of the land during the minoritie of the heire, but not the wardship of the bodie, for albeit the Lord seemeth to haue a double interest in the wardship of the bodie, one as Lord, and another as father, yet as Father, and not as Lord in iudgement of Law, he shall haue the wardship of the bodie of his son and heire apparent, in respect of nature, which was before any wardship in respect of Seigniories by Knights seruice began, and that wardship by reason of nature cannot be waued, and claime made in respect of the Seigniorie. And the Executors of the father shall not haue such a wardship which the Testator had as father, neither can such a wardship be forfeited by outlawrie, because it is due to the father in respect of priuitie of nature.

33.H.6.55.Li.7.fo.13. in Calvins case. V.Flet.li.1.ca.12.§ cum Patr. de feod. &c.

¶ *De son heire apparent.* **And therefore if the father be attainted** of felonie, &c. then cannot the sonne or daughter be an heire apparent, because the bloud is corrupted betweene them, and consequently in the life of the father, his sonne in that case shall be in ward.

A woman seised of lands in fee holden by Knights seruice, taketh husband an Alien, and hath issue, and the wife dieth, the issue shall be in ward, and the father shall not haue the custodie of him, for that in the eye of the Law he is not his heire apparent, as Littleton here speaketh.

Sect. 115.

This Section is an addition to Littleton, and therefore I passe it ouer, and the rather, for that the said Statute of 4. H.7. is become of no force, for that by the Statute of 27.H.8. cap.10. all vses are transferred into possession.

¶ NOta, si home soit seisie de Terre que est tenus per seruice de Chiualer, & fait feoffment en fee a son vse, et mourust seisie del vse, son heir deins age, et nul volunt per luy declare, le Seignior auera Briefe de droit de gard de corps, et del Terre sicome Tenant vst deuie seisie del demesne. Et si le heire soyt de pleine age al temps del morant son ancestor, vn tiel case il payera reliefe sicome il fuissoit seisie del demesne. Et cest per lestatut de anno 4.H.7.cap.17.

NOte, if a man be seised of land which is holden by Knights seruice, and maketh a feoffement in fee to his own vse, and dieth seised of the vse, his heire within age, and no will declared by him, the Lord shall haue a Writ of Right of the wardship of the bodie and land, as if the tenant had died seised of the demesne. And if the heire bee of full age at the time of the decease of his Ancestor, in this case he shal pay reliefe, as if he had bin seised of the demesne. And this is by the statute of 4.*H.7.cap.*17.

Sect.

Sect. 116.

¶ NOta, il y ad Gardein en droit en Chiualrie, et Gardein en fayt en Chiualrie. Gardein en droit en Chiualrie eſt, lou le Seigniour per cauſe de ſon Seigniorie, eſt ſeiſie de gard de Terres & del heyre, vt ſupra. Gardein en fayt en Chiualrie eſt, lou en tiel caſe le Seigniour apres ſon ſeiſin graunt per fait ou ſauns fayt le Gard des Terres, ou del heire ou dambideux a vn auter. Per force de quel grant le Grauntee eſt en poſſeſſion, donque eſt le Grauntee appel Gardeine en Fait.

NOte, there is Gardeine in right in Chiualrie, and Gardeine in Deede in Chiualrie. Gardeine in Right in Chiualrie is, where the Lord by reaſon of his Seigniorie is ſeiſed of the Wardſhip of the Lands, and of the heire, *vt ſupra*. Gardeine in Deede in Chiualrie is, where in ſuch caſe the Lord after his Seiſin grants by Deed, or without Deede, the Wardſhip of the Lands, or of the Heire, or of both, to another, by force of which grant the Grauntee is in poſſeſſion, then is the Grauntee called Gardeine in Fait, or Gardeine in Deede.

¶ HEre Littleton diuideth Gardeine in Chiualrie, into Gardein in Right, and Gardeine in Fait. And this is euident, and needeth no explanation.

¶ *Per fait ou ſauns fait.* Heree Littleton affirmeth, That the wardſhip of the bodie may bee graunted ouer without Deed, and herein note a diuerſitie betweene an originall Chattell of a thing that properly lieth in grant, and a Chattell deriued out of a Freehold of any thing that lieth in grant. As for example, if a man maketh a Leaſe for yeares of a Milleine, this cannot be done without deed, neither can the Leſſee aſſigne it ouer without Deed, becauſe it is deriued out of a Freehold that lieth in grant: but the wardſhip of the bodie is an originall Chattell, during the minoritie, deriued out of no Freehold, and therefore as the Law createth it without deed, ſo it may be aſſigned ouer without Deed.

12.E.3.tit.Grant 59.7.E.3.63. 26.E.3.65.28.E.3.96 14.E.3.Aſſ.ſur Leſt.17. 25.E.3.40.31.E.3.Voucb.5 46.E.3.25.20.E.4.16. 12.H.4.19.5.H.7.17.36. 22.E.Dyer 371.35.H.8. Brit.Grant 85.

A Corporation aggregate of many cannot make a Leaſe for yeares without Deed, in reſpect of the quality of the Incorporation, but that Leſſee may aſſigne it ouer without Deed.

36.H.8.tit.Grant B.152. 22.H.6.34.19.H.6.33.

If an Aduowſon be holden by Knights ſeruice, and the Tenant dieth, his heire being within age, the Lord cannot grant the wardſhip of the Aduowſon without Deed, becauſe it is deriued out of an Inheritance that lieth in grant, and paſſeth not by Liuerie: for, Ius præſentandi eſt incorporale, and ſo (albeit there be diuerſitie of opinion in our bookes) is the Law taken at this day.

24.E.3.69.70.5.E.3.58. 43.E.3.15.5.H.7.36. 14.H.7.16.15.H.7.8.

Brall.366.368.246.43 E.3. 1.6. 5.H.7.37.11.H.6.4 6.H.7.3.18.H.8. 16.Eliz.Dyer 323.

Chap. 5. Sect. 117.

Socage.

Mirror ca.1.§.3.

4.Hen.ca.19.
Lib.4.Turringhams ca.
fo.39.& 4 H.7.ca.12.

TEnure in Socage. Agriculture or Tillage is of great account, in Law, as very profitable for the Common wealth, wherein the goodnesse of the habit is best knowne by the priuation, For by laying of Lands, vsed in tilth, to pasture; Sre maine inconueniences doe daily encrease. First, Idlenesse, which is the ground and beginning of all mischieses. 2. Depopulation, and decay of townes; for where in some townes 200. persons were occupied, and liued by their lawfull labours, by conuerting of tillage into pasture, there haue bene maintained but two or three heardmen: And where men haue bene accounted sheepe of Gods pasture, now become sheepemen of these pastures. 3. Husbandry, which is one of the greatest commodities of the Realme, is decayed. 4. Churches are destroyed, and the seruice of God neglected by diminution of Church liuings, (as by decay of tythes, &c.) And 5. Iniury and wrong done to Patrons and Gods ministers. 6. The defence of the Land against forraine enemies enfeebled and impayred, the bodyes of Husbandmen being more strong and able, and patient of cold, heate, and hunger, then of any other.

TEnure en socage est, lou le tenant tient de son seignior son tenement p certeine seruice p touts maners de seruices, issint que les seruices ne sont pas seruices de chyualer: Sicõe lou home tient son fre de son seignior p fealtie & p certeine rent p touts maners de seruices, ou lou home tient p homage & fealtie & cert rent pur touts maners de seruices, ou lou il tiẽt p homage & fealty p touts maners de seruices, car homage p soy ne fait pas seruice de chkr.

TEnure in Socage, is where the Tenant holdeth of his Lord the tenancie by certaine seruice for all manner of seruices, so that the seruice be not Knights seruice: As where a man holdeth his land of his Lord by Fealty and certaine rent for all manner of seruices: or else where a man holdeth his land by homage, fealty, and certaine rent, for all manner of seruices, for Homage by it selfe maketh not Knights seruice.

The two consequents that follow of these inconuenences, are first the displeasure of Almighty God, and secondly the subuersion of the Politie and good Gouernment of the Realme, and all this appeareth in our bookes. And the Common Law (a) giueth errable land (which anciently is called Hyde & gaine) the prehemtuencie and precedencie before meadowes, pastures, woods, mines, and all other grounds whatsoeuer: and * aueria carucæ the beasts of the plow haue in some cases more priuiledge than other cattle haue. And amongst the Romans Agriculture or tillage was of high estimation, insomuch as the Senators themselues would put their hand to the plow, and it is said, That neuer prospered tillage better, then when the Senators themselues plowed (such force hath the example of superiors) whereof three famous Romanes in their seuerall kindes spake.

(a) 20.E.3. Admeasurement. 8 14. Ass.21.24.E.3.25.
* Mirror.
Bracton fo.217. Fleta.lib.2. ca.41. Regist.orig.97. Oeram.28.39.4.E.3.1.a. 18.E.2.tit.assis sur lestat.45.Temp.E.1. Anuary 310. 29.E.1.16.17. Cic.lib.1.offic.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, Nihil vberius, nihil dulcius, nihil libero homine dignius.

Virgil.lib.1.Georg.

O fortunatos nimium, sua si bona norunt
Agricolas, quibus ipsa procul discordibus armis
Fundit humo facilem victum iustissima tellus.

Seneca in Epist.

Nullum laborem recusant manus quæ ab aratro ad arma transferuntur, &c. fortior autem miles ex confragoso venit, sed ille vnctus, & nitidus in primo puluere deficit. But now let vs peruse our Authors words.

Socagium

¶ *Socagium.* Littleton in this chapter Section 119. fetcheth this word from the originall. Socagium idem est quod seruitium socæ, & soca idem est quod caruca. vn soke ou vn carue.

And Bracton agreeth herewith. Dicitur socagium (saith he) à soceo & inde tenentes dicuntur Socmanni (b) eo quod deputati sunt tantummodo ad culturam. And Benerth signifieth the seruice of plough and cart. It is to be obserued that in the bookes of (c) Domesday, Land holden by Knights seruice was called Tainland, and land holden by Socage was called Reueland, which appeareth in that there it is said, Hæc terra fuit terra regis Edwardi Taineland sed postea conuersa est in Reueland. And in that booke they that held in Socage were called by seuerall names, as Sochemanni or Sokemanni, which still continueth, sometime * Coleberti. i. qui tenent in liberum socagium per redditum, and sometime they are called Radcheneſtres. i. liberi homines, qui tamen arabant, herciabant, falcabant, & metebant, &c. And here it appeareth how necessary it is, that words be fetched from their originalls, and our Author Est verus Etimologus both in this and in many other places in his (d) three bookes. And it is to be obserued once for all, that the legall termination of (agium) in composition signifieth seruice or dutie; as homagium the seruice of the man, Escuagium, seruitium scuti, (e) Socagium seruitium socæ, hidagium the dutie to be paid for a hide or plough-land, and so of cornagium, coragium, carnagium, cariagium, burgagium, villenagium, guidagium, (which one discribeth thus) quod datur alicui vt tuto conducatur per loca alterius, and the like.

¶ *Isiint que les seruices* (f) *ne sont pas seruices de Chivaler.* And in the next Section he saith, and euery tenure, that is not a Tenure in Chiualry is a tenure in Socage, Ex donationibus autem feoda militaria, vel magnam Seriantiam non continentibus oritur nobis quoddam nomen generale quod est sokagium. Here Littleton speaketh of Tenures of common persons, for grand Seriantie is not Knights seruice, and yet it is not a tenure in Socage, as shall be said hereafter. Also here he meaneth temporall seruices, and not Frankalmoigne as by the examples he put is manifest, and as in his proper place shall appeare more at large. Also here Littleton speaketh of Socage largely taken, and so called ab effectu, that is, all tenures that haue the like effects and incidents belonging to them, as Socage hath, are termed tenures in Socage, albeit originally seruice of the plow was not reserued: as if originally a Rose, a paire of guilt Spurres, a Rent, and such like were reserued, or that the Tenants in Condemnatos vltrices manus mittant vt alios suspendio, alios membrorum detruncatione, &c. puniant, these are said to be tenures in Socage ab effectu, for that there shall be like Gardein in Socage, like Reliefs, and such other effects and incidents as a tenure in Socage hath, and are so tearmed to distinguish the same from Knights seruice. Nay, the worst Tenure that I haue read of, is of this kinde, as to hold lands to be Vltor sceleratorũ condemnatorum, vt alios suspendio, alios membrorum detruncatione vel alijs modis juxta quantitatem perpetrati sceleris puniat, (that is) to be a Hangman or Executioner. It seemeth in ancient times such officers were not Voluntaries, nor for lucre to be hired, vnlesse they were bound thereunto by Tenure. And so note that some Tenures in Socage are named à causa, and some and the greater part ab effectu.

¶ *Car homage de soy ne fait seruice de chiualer.* But it is a presumption that where homage is due, that the land is holden by Knights seruice, as hath beene said.

(b) *Glanuil. lib.7.ca.9. & 11. & lib.9.ca.4. Fleta lib.1.ca.8. & lib.3. ca 14. & 16. Britton fo.154.*
(c) *Domesday. Herefordsc. Vid. denant, Sect.1. Sutru. Wendesord. Wefcesterse.*
* *Mich. 10.E.3. coram rege Wilts in Thesaur.*
(d) *For etimologies vid. Sect.95.154.164.204. 234.267.268. &c*
(e) *Fleta lib.2.ca.14. Bracton.lib 2.ca.16. Britton fo.164.*
(f) *Mirror, ca.2 §.18.*

Fleta vbi supra.

Ockam, cap. qua per solam consuitudinem, &c.

Ockam fo.31.a. & b.

Sect. 118.

¶ Item hõe poit teñ de son sñr pur fealty tm, et tiel tenure est tenure en socage. Car chescun tenure que nest pas tenure in chiualry, est tenure en socage.

ALso a man may hold of his Lord by fealty only, and such tenure is tenure in socage: for euery tenure which is not tenure in chiualrie is a tenure in Socage.

Of this sufficiently hath beene said before.

Sect. 119.

¶ Et il est dit, que la cause pur que tiel tenure est dit a de le nosme de tenure en socage,

AND it is said that the reason why such tenure is called, and hath the name of tenure in Socage,

¶ *Temps de memory* Time of memorie is when no man alius hath had any greet

Cap. burgage. Sect.170.

Mirror. cap. 2 §. 18. Vide 19. E. 2. auowrie. 224. 3. E. 3. accon. sur lest. 24. 10. E. 3. 24. 20. E. 3. auowrie 124. 39. E. 3. 17. 39. Ass. p. 3. 20. Ass. 1.

Cap. confirmation. Sect. 539.

4. E. 3. 161. 6. E. 3. 283.

prooфe to the contrarie, nor haue any Conuſance to the contrarie, as ſhall bee hereafter ſaid in his proper place. And of neceſſitie this change hereafter ſpoken of muſt be before time of memorie, for within time of memorie, the ſeruices of the Plough cannot be changed into money by conſent of the Tenant, and the deſire of the Lord &c. into an annuall Rent, neither by releaſe or confirmation or other conueyance as long as the Seigniorie remaine as ſhall bee ſaid in his due place.

¶ *Deuoient uener oue lour Sokes.* The Plough is named propter excellentiã, but the Sickle and the Sythe for the reaping in Haruеſt and ſuch like are alſo included. For as Carucata terræ, a plough land, may containe Houſes, Mylles, Paſture, Medow, and wood &c. as pertaining to the Plough, ſo vnder the ſeruice of the Plough all ſeruices of Tillage or Husbandry are included.

¶ *Vncore le noſme de Socage demurt.* Although the cauſe wherupõ the name of Socage firſt grew bee taken away, yet the name remaine (as it hath beene) and is vſed to diſtinguiſh this tenure from a tenure by Knights Seruice. Nomina ſi neſcis perit cognitio rerum

eſt ceo; Quia ſocagium idem eſt quod ſeruitium ſocæ, & ſoca idem eſt quod caruca, .s. **vn ſoke ou vn carue. Et en ancient temps deuant le limitation de temps de memorie grand part de les tenants que tyendront ð lour Seignioꝛs per ſocage, deuoient uener oue lour ſokes, chescun de les dits tenants pur certein iours per an pur arer & ſemer les demeſnes le Seignioꝛ, & pur ceo que tielꝛ ouerages fueront fait pur le viuer & ſuſtenance de lour Seignioꝛs, ils fueront quits enuers lour Seignioꝛs ð touts maners de ſeruices, &c. Et pur ceo que tielꝛ ſeruices fueront faits oue lour ſokes tiel tenure fuit appel tenure en ſocage. Et puis apꝛes tiels ſeruices fueront changes en denyers, per conſent des Tenants & per deſire des Seignioꝛs, s. en vn annual rent, &c. Mes vncoꝛe le noſme de Socage demurt, & en diuers lyeux les tenants vncoꝛe font tiels ſeruices oue lour ſokes a lour Seignioꝛs, iſſint que touts maners ð tenures q̃ ne ſont pas tenures p ſeruice de chiualer, ſont appels tenur̃s ẽ ſocage.**

is this, becauſe *Socagium, idem eſt, quod ſeruitium Socæ*, and *Soca, idem eſt quod caruca, &c.* A Soke or a Plough. In ancient time before the limitation of time of memorie, a great part of the tenants which held of their Lords by Socage, ought to come with their Ploughes, euery of the ſaid Tenants for certaine dayes in the yeare to plow and ſow the Demeſne of the Lord. And for that ſuch Workes were done for the liuelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſeruices, &c. And becauſe that ſuch ſeruices were done with their Ploughes, this tenure was called Tenure in Socage. And afterward theſe ſeruices were changed into money by the conſent of the Tenants, and by the deſire of the Lord, *viz.* into an annuall rent, &c. But yet the name of Socage remayneth, and in diuers places the Tenants yet doe ſuch ſeruices with their Ploughes to their Lords, ſo that all manner of Tenures which are not Tenures by Knights Seruice, are called tenures in Socage.

rerum: Et nomina si perdas certè distinctio rerum perditur. Therefore the names of things (as Littleton here teacheth) are for auoyding of confusion diligently to be obserued.

Section 120.

¶ Item si home tient de son Seignior per escuage certaine, s. c̃ tiel forme quant lescuage curge & est assesse per Parliament a griender summe ou meinder summe, que le tenant paiera a son Seignior forsque demy marke pur escuage, & nient pluis ne meins, a quel graund summe, ou a quel petite summe q̃ lescuage courge &c. tiel tenure est tenure en Socage, & nemy seruice de chiualrie. Mes lou le summe que le tenãt paiera pur lescuage est non certain, s. lou il poit estre q̃ l' somme q̃ le tenant paiera pur lescuage a son Seignior poit estre a vn foits le greinder & a auter foits le meinder, solonque ceo que est assesse &c. donques tiel tenure est tenure per seruice de chiualer.

ALso if a man holdeth of his Lord by escuage certaine .s. in this manner, when the escuage runneth, and is assessed by Parliament to a greater or lesser summe, that the Tenant shall pay to his Lord but halfe a Marke for Escuage, and no more nor lesse, to how great a sum, or to how little the escuage runneth, &c. Such tenure is tenure in Socage, and not Knights Seruice, but where the summe which the tenant shall pay for Escuage is vncertaine, .s. where it may bee that the summe that the tenant shall pay for escuage to his Lord may be at one time more, and at another time lesse according as it is assessed, &c. such tenure is tenure by Knights Seruice.

¶ *Scuage certeine.*

Is not in rei veritate seruitium Scuti, which is to bee done by the body of man, but it is seruitium Crumenæ, of money which is to be drawne out of the Purse, and that is in effect a Tenure in Socage, wherein it is to be obserued that the seruice of payment of money is the more base and lesse profitable, for the Commonwealth in this case, and hereof somewhat hath beene said before in the Chapter of Escuage, Sect.98.99.

If a man hold by Homage, Fealtie, and Escuage, s. by an halfe penny when escuage runs at fortie shillings, this is a tenure in Socage and no Knights Seruice for two causes.

15.E.2.tit.auowrie 215.
31.E.1.Ass.441.
26.Ass.66. 5.E.3.6.

First, It is Socage tenure because of the certaintie for to the tenure in Socage, certa seruitia doe euer belong, so

5.E.4.128. Vide Rot. Parl.
4.E.3.nu 19. Clauering case excellently resolued in Parliament.
Hill.3.E.2.coram Rege.
Rot.34.Agnes. Frowik case.

as the Husbandman may the rather liue in quiet.

Secondly, Escuage is to bee paid at euery time when it is assessed, and here it is not to bee paid but when it amounteth to fortie shillings.

Sect. 121.

¶ Item si home tient sa tẽ pur paier certaine rent a son seignior pur Castle-garde, tiel tenure est tenure ẽ socage:

ALso if a man holdeth his Land to pay a certaine rent to his Lord for Castle-gard, this tenure is tenure in socage, but where

¶ HErein the difference standeth thus, If a rent be paid for Castle-gard it is cleere a socage tenure, as it is

Vide Sect.88.89.

Vide lib.4. fol.88. in Lutterels case. 19.R.2. gard 195. 26. Ass.66 F.N.B.83.256. Lib.6. fol. 20. Gregories case.

is agreed in Lutterels Case according to Littletons opinion, but if a summe in grosse or other thing be voluntarily paid or giuen by

Mes lour tenant doit p luy mñ, ou p vn auter faire Castle garde, tiel tenure est tenure per seruice de chiualer.

the tenant ought by himselfe or by another to doe Castle-gard, such tenure est tenure by Knights Seruice.

the Tenant, and voluntarily receiued by the Lord in lieu of Castle-gard, yet the tenure by Knights Seruice remayneth. Vide Sect.88.89.

Section 122.

¶ IT is called Rent Seruice, because it is accompanied with some corporal seruice, as Fealtie at the least, in respect whereof the Lord may distraine for it of common right.

¶ Item en touts cases lour tenant tient del Seignior a paier a luy alcun certeine rent, cel rent est appelle rent seruice.

ALso in all cases where the tenant holdeth of his Lord to pay vnto him any certaine rent, this rent is called Rent Seruice.

See more of this matter in the Chapter of Rents.

Sect. 123.

¶ *EN tiels tenures ẽ Socage.* If a man bee seised of a Rent charge, Rent secke, common of pasture, and such like Inheritances, which doe not lie in tenure, and dieth his heire within age of 14. yeares. In this case the heire may chose his Gardein, but if he bee of such tender yeares as hee can make no choice then (if the father hath made no disposition of the custodie of the childe) it were most fit that the next of kinne to whom the Land cannot discend should haue the custodie of him. And whosoeuer taketh the rent, the heire shall charge him in an account. But if he hold any Land in Socage, In that Case the

Vide le statute de 4. & 5. Ph. & Mar. cap. 8.

¶ Item en tielx tenures en socage si l' l' ad issue & deuie, son issue est ẽs deins lage d' 14. ãs, donques l' prochine amy del heir a q̃ lheritage ne poit discẽdr auer la gard d' la terr & del heir iesq̃ al age del heir d' 14. ans, & tiel Gardein est appelle gardein en socage. Car si la terre descẽdist al heire de pt le pier donques la mere, ou auter procheine cosen de pt le mere auera la garde. Et si terre discendist al heire de part la mere, donques le pier ou le prochein amy de part de pier auera le garde de tielx terr̃s ou tenemẽts. Et quant lheire vient al age de 14. ans compleat, il poit enter & oustre le Gardein en Socage, &

ALso in such tenures in Socage if the Tenant haue issue and die, his issue being within the age of 14. yeares, then the next friend of that heire to whom the inheritance cannot discend shall haue the Wardship of the Land and of the Heire vntill the age of 14. yeares, and such Gardeine is called Gardeine in Socage. For if the land discend to the heire of the part of the father, then the mother, or other next Cousin of the part of the mother shall haue the Wardship. And if land discend to the heire of part of the mother, then the father or next friend of the part of the father shall haue the Wardship of such Lands or Tenements.

Or-

occupier la terre luy meſm̃ ſil voit. Et tiel Gardeine en ſocage ne prendra aſcuns iſſues ou profits de tielx terres ou tenements a ſon vſe demeſne, mes tantſolement al vſe & profit del heire, et del ceo il rendra accompt al heire quant pleaſt al heire apres ceo que lheire accompliſh lage de xiiii. ans. Mes tiel Gardein ſur ſon accompt auera allowance de touts ſes reaſonable coſts et expences en touts choſes, &c. Et ſi tiel gardein maria lheire deins xiiii. ans, il accomptera al heire, ou a ſes executors de value del mariage, coment que il ne prift riens pur le value del mariage, pur ceo que il ſerra tenu ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage, ſinon que il luy maria a tiel mariage que eſt tant en value come le mariage del heire, &c.

And when the heire cõmeth to the age of 14. years complete he may enter and ouſt the Gardian in ſocage, and occupie the land himſelfe if hee will. And ſuch gardian in ſocage ſhal not take any iſſues or profits of ſuch lands or tenemẽts to his own vſe, but only to the vſe & proffit of the heire, and of this he ſhal render an account to the heire when it pleaſeth the heire after hee accompliſheth the age of 14. yeares. But ſuch gardein vpon his account ſhal haue allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch gardein marry the heire within age of 14. yeares hee ſhall account to the heire or his Executors of the value of the mariage, although that hee tooke nothing for the value of the mariage, for it ſhall bee accounted his owne folly, that he would marry him without taking the value of the marriage, vnles that he marrieth him to ſuch a mariage that is as much worth in value as the mariage of the heire.

Gardian in ſocage ſhall take into his cuſtody as well Rent charges, &c. as the land holden in Socage becauſe hee hath the cuſtody of the heire.

¶ *Si le tenant ad iſſue & denie* The ſame Law it is if the Tenant hath no iſſue, but a brother or coſin within age of 14 yeares at the time of his death. (a) Alſo this doth extend aſwell to iſſue female as to iſſue male.

(a) 10. R. 2. Account, 132.

¶ *Deins lage de 14. ans.* Of this ſufficient hath beene ſpoken in the next preceding chapter.

¶ *Donques le procheine Amy del heire a que le enheritance ne poet diſcender.* The next friend of the heire, &c. Here Amy or friend is taken for the next of blood, ſo as the effect of it is, that the next of blood to whom the inheritance cannot diſcend, whereby affinitie without blood is excluded.

Glanvil, lib. 7. cap. 11. Britton. 163. Flet. lib. 1. cap. 9. Stat. de Hibernia, 11. Partition.

¶ *Le prochein.* The next.

(b) If there be two or three brethren, and the youngeſt holdeth land in Socage and hath iſſue and dieth his iſſue within age of 14. yeares both the Uncles are in equall degree, and yet the eldeſt ſhall be Gardein, becauſe in equall degree the Law preferreth him. (c) And yet if lands holden in Socage be giuen to a man and the heires of his body, and he dieth, his heire within age, the next coſin of the part of the father albeit he be worthier ſhall not bee preferred before the next couſin of the part of the mother, but ſuch of them as firſt ſeaſeth the heire ſhall haue his cuſtody: But if lands bee giuen in Frankmariage, and the Doneés haue iſſue and die their iſſue within age of 14. yeares, the next of kinne of the part of the mother ſhall haue the cuſtody of the body, and not the next of kinne of part of the father albeit he firſt ſeaſed him, becauſe the mother was the cauſe of the gift. If a man bee ſeiſed of lands holden in Socage of the part of his father, and of other lands holden in Socage of the part of his mother, and dieth his iſſue being within the age of 14. yeares. In this caſe ſuch of the

(b) *Vid. 30. Aſſ. 47.*

(c) *Pl. com. Carill. caſe.*

47. H. 3. Gard 146.

the next of kin of either side as first happeth the bodie shal haue him, but the next of bloud of the part of the father shall enter into the lands of the part of the mother, and the next of kinne of the part of the mother, shall enter into the lands of the part of the father.

(d) Gardein in Socage of the bodie and lands of B. within the age of fourteene yeares, A. shall be Gardein in Socage per cause de Gard. But an Infant within age, that (e) is not in the custodie of another, cannot be Gardein in Socage, because no writ of account lieth against an Infant. And herewith agreeth Bract. (f) and yeeldeth this reason, Alium regere non potest, qui seipsum regere non nouit. And Fleta saith, (h) That minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit: And by like reason an Ideot, a man non compos mentis, a Lunaticke, a man sæcus & mutus, or surdus & mutus, or a Leaper remooued by a writ de Leproso amouendo, cannot be a Gardein in Socage, but in a case of Gard per cause de Gard, there lieth an Action of Account against A. in the case aboue said.

(d) F.N.B.139.h. Regist.
(e) 7.E.3.46.16.E.3.c.52 21.E.3.8.31.E.3.Enfant 9. 17.E.2.account 121. 26.E.3.63.10.H.6.14. F.N.B.118.
(f) Bract.li.2. fo.88.
(h) Flet.li.1.ca.10.

¶ *A que le heritage ne poet descender.* (i) Nullus hæredipetæ suo propinquo vel extraneo periculosa sane custodia committatur. Note (k) this word (Poet) may you can. (l) And therefore this doth not onely excludes an immediate discent, but all possibilitie of discent. As if a man hath issue two sons by seuerall Venters, & hauing lands holden in Socage of the nature of Burgh English, dieth, the yonger brother within age of 14. yeres, (m) the elder brother of the halfe bloud shall not haue the custodie of the land, because by possibilitie the elder may inherit the land, for if the yongest die without issue, & the land discend to an Vncle, the elder brother of the halfe bloud may be heire vnto him: & herewith do agree our antient Authors: (n) Hæres sokmanni sub custodia capitalium Dñorum non erit, sed sub custodia consanguineorum suorũ propinquiorũ, hoc est, eorũ qui coniuncti sunt iure sanguinis, & non iure successionis, ex parte quorum non discendit hæreditas, & regulariter verum est, quod nunquam remanebit aliquis in custodia alicuius, de quo haberi possit suspitio, quod velit ius clamare in ipsa hæreditate, & inde si plures sint filiæ & hæredes & tenere debeant in socagio, nulla debet esse in custodia alterius.

(i) Lib.Rub.cap.70.
(k) Glanu.li.7.ca.11.
(l) Tl.Com Carrels case.
(m) Lit.li.1.fo.2,3.
(n) Bract.li.2.fol.87. Brit.fo.163.b. Fle.li.1.c.10. 28.E.1.Stat.1.Forteſc.c.44.

(o) And this is contrarie to the Ciuile Law; for, Leges Ciuiles impuberum tutelas proximis de eorum sanguine committunt, agnati fuerint, siue cognati, vnicuique, videlicet, secundum gradum & ordinem qui in hæreditate pupilli succeſſurus est. But this the Law of England saith, Est quasi agnum lupo committere ad deuorandum.

(o) Forteſc.ch.supr.Statut. de Homagio capiendo, temp: E.1.

¶ *Donques la mere.* Note, albeit Land cannot discend to the mother from her sonne, (as hath beene said) because Inheritance cannot ascend, yet here it appeareth by Littleton, That she is next of bloud, for none (as hath beene said) can be Gardein in Socage, but the next of bloud, and the like is to be said of the Father, as hereafter next appeareth.

¶ *Donques le Pier.* By this it appeareth, That the Father in case of a tenure in Socage shall be gardein in Socage, & shal not haue the custodie of his eldest sonne, in respect of his paternall naturall custodie, (as he shall haue in case of a Tenure by Knights seruice, as before it appeareth) but as Gardeine in Socage: and the reason of the diuersitie is, for that in the case of a tenure in Socage, the father must by Law be accountable to the Sonne both for his mariage, as also for the profits of his Lands, which he should not be if he had the custodie of his eldest sonne in this case as his father, in respect of nature, and the act a Law neuer doth any man wrong.

But no Lord or other person in respect of any tenure by Knights Seruice or otherwise shal haue the custodie of any child that is heire apparant to his father, but the father only during his life, as hath beene said before.

It is to be obserued, that in the Lawes of England, there are three manner of Gardeinships, viz. by the Common Law, by the Statute Law, and Custome. By the Common Law there are foure manner of Gardians, viz. Gardein in Chiualrie, whom Littleton hath described before Section 103. &c. Gardein by nature, as the Father of the eldest sonne of whom Littleton hath spoken Section 114. Gardein in Socage treated of by Littleton in this Section, and Gardein per cause de nurture, all frequent in (a) our Bookes. By the Statute, that is, in 4. & 5. Phil. & Mariæ. of women children, and that is in two manners, either of the father or mother without assignation, or of any other to whom the father shall appoint the custodie, either by his last will, or by any Act in his life time, whereof you shall reade at large (b) in Ratcliffes Case in my Reports.

(a) 8.E.3.43. 8.E.4.5.
(b) Lib.3 fol.57. Ratcliffes case.

(c) Lastly, by Customs, as of Orphans by the custome of the Citie of London, and of other Cities and Boroughes.
(c) 32.E.3.gard.31. 3.R.2.gard.166.

¶ *Tant solement al vse & profit del heire.* And therefore Gardein in Socage shall not forfeit his interest by outlawrie or attainder of felonie or Treason because he hath nothing to his owne vse, but to the vse of the heire.

His

Also if the mother be Gardian in Socage, and taketh husband, and dieth, the husband shall not haue this custody by Surutnour, because the wife had it en auterdroit in the right of the heire. Tl.Com.

A Gardian in Socage shall not (d) present to a benefice in the right of the heire because hee cannot be accomptable therefore, for that hee can make no benefit thereof, for the Law doth abhorre simony or any corrupt Contract for benefices, and therefore in that case the heire shall present himselfe, and Britton speaking of these Gardians said well, Les queux gardeins sont plus serjants que gardeins, (that is) which gardians are rather seruants then Gardians.

(d) 8.E.2. *presentment* 10. 7.E.39. 27.E.3.89. 29.E.3.5. F.N.B 33. 31.E.3. *Estoppel*, 340. *Britton* 163.164. *Fleta lib.*1.*cap.*10.

¶ *Ils rendra account, &c. apres que lheire ad accomplishe lage de* 14. *ans.* This point hath beene much controuerted in our bookes, and the causes of the doubts haue beene, first vpon the words of the statute of (e) Merlebridge, ca.17. 2. Vpon the originall writ of Account against the Gardein in Socage. The words of the statute be Cum ad legitimam ætatem peruenerit sibi respondeat, &c. and legitima ætas, (f) lawfull age, is xxi. yeares. 2. Also the writ of Accompt reciteth the said statute, Quare cum de communi consilio regni nostri prouisum sit quod custodes terrarum & tenementorũ quæ tenentur in Socagio hæredibus terrarum & tenementorum illorum cum ad plenam ætatem pervenerint reddant rationabilem compotum, (g) whereupon it is gathered that no action of account did lye against the Gardein in Socage at the Common Law, vntill the heire bee of his lawfull age of 21. yeares. But as to the first (legittima ætas) as the statute (h) speaketh) or plena ætas (as the writ doth render it) are to be vnderstood secundum subiectam materiam, that is of the heire of Socage land whose lawfull and full age as to the custody or Gardeinship is 14. And as to the recitall of the statute, (i) it is euident that an action of Account did lye against Gardein in Socage at the Common Law. And that the statute was made in affirmance or declaration of the Common Law for the statute speaketh only De custodia parentum that is of a Gardein in right, but yet an action of Account lyeth against him that occupieth the land as Gardein, albeit he be not of the blood (as hereafter shall be said.) And vpon consideration had of the said statute and of all the bookes, it was adiudged in the Court of Cõmon Pleas, Pasch.16.Eliz.rot.436. according to the opinion of Littleton, that the heire after the age of 14. yeares shall haue an action of Account against the Gardein in Socage, when he will at his pleasure, and so is an ancient question well resolued.

(e) *It is called the statute of Merlebridge because the Parliament in* 52.*H.*3 *was holden there.*
(f) 16.E.3. *writ* 100. 18 E.3.55.77. 29 E.3.5. *vid.* 32.E.3.*Gard.* 31. F.N.B.118. 6.E.3.38.
(g) 16.E.2. *Account* 129. 17.E.2.*ibid.* 121.
(h) 2 E.2. *Account* 14.E.3 *Ibid.* 3.*Mar.*137. *Kelwey* 131.
(i) 18.E.2.*Auowry* 220.

Britton was of opinion that the statute of Marlebridge which gaue the Capias in Account, extended to Gardain in Socage, for he wrote before the statute of W.1.ca.11. But later bookes haue ouer-ruled this point, that no Capias lyeth against Gardein in Socage, for the statute extendeth to Bailifes only; Neither doth the statute of W.2. extend to gardein in Socage, for that speaketh only De seruientibus, balivis, camerarijs, & receptoribus.

Mirror ca 2.§.17. *Britton. fo.* 163.*b.* *Fleta lib.*2.*ca.*64. 18.E.2. *Auowrie* 220. 17.E.3. 59. *Merlbr.ca.*23. *W.*2.*ca.*11.

¶ *Mes tiel gardein sur son account auera allowance de touts ses reasonable costs & expences en touts choses.* And this is due to all accountants by the Common Law, and so it is declared by the said statute of Merlebridge, Saluis ipsis custodibus rationabilibus missis suis.

*The statute of Merlbr. intended by Lord.*11 *ca.*17.

¶ *Allowance.* What other allowances shall the gardein haue? If the Gardein receiue the Rents and profits of the lands, and be robbed of the same, whither shall he be discharged thereof vpon his Account? and it seemeth, that if he be robbed without his default of negligen ce hee shalbe discharged thereof. As if a Bailife of a Mannor or a Receiuer, or a Factor of a Merchant or the like accountant be robbed, hee shall be discharged thereof vpon his account and seeing the Gardein shall be charged as Bailife after the heires age of 14. and be discharged vpon his account, if he be robbed, Pari ratione if hee bee robbed before the age of 14. But otherwise it is of a Carrier, for he hath his hire, and thereby implicitely vndertaketh the safe deliuery of the goods deliuered to him, and therefore he shall answer the value of them if he be robbed of them. Note the diuersity and so it was resolued * in the Kings bench.

41.E.3.3. 22.*Ass.*41. 22.E 3.*Account* 111. 29.*Ass* 28. 3.*H.*7 4.*b.* 6.*H.*7.12. 10.*H.*7 25. 10.*H.*6 21. 2.E.4.15. *Dodt. & Stud.ca.*38.*fo.*130.

* *Hil.*38.*Eliz. inter Woodlefe & Curties.*

So it is if goods be deliuered to a man to be safely kept, and after those goods are stolne from him, this shall not excuse him, because by the acceptance he vndertooke to keepe them safely, and therefore he must keepe them at his perill.

So it is if goods be deliuered to be one to be kept, for, to be kept, and to be safely kept, is all one in Law, But if the goods be deliuered to him to be kept, as hee would keepe his owne, there if they be stolne from him without his default or negligence, he shalbe discharged. So if goods be deliuered to one as a gage or pledge, and they be stolne, he shall be discharged, because he hath a property in them, and therefore he ought to keepe them no otherwise then his owne; but if he that gaged them, tendred the money before the stealing, and the other refused to deliuer them, then for this default in him he shall be charged.

29.*Ass p.* 28.

If A. leaue a chest locked with B. to be kept, and taketh away the Key with him, and acquainteth

8.E.2.*tit. Dotaine* 59.

quainteth not B what is in the Cheſt, and the Cheſt together with the goods of B. are ſtolne away, B. ſhall not be charged therewith, becauſe A. did not truſt B. with them as this caſe is. And that which hath beene ſaid before of ſtealing, is to be vnderſtood alſo of other like accidents as ſhipwracke by ſea. fire by lightning, and other like incurable accidents. And all theſe caſes were reſolued and adiudged in the Kings bench.* And by theſe diuerſities are all the bookes concerning this point reconciled.

* Paſch.43.Eliz. inter Southcote & Browne in Com.

Note, Reader it is neceſſary for any that receiueth goods to be kept, to receiue them in this ſpeciall manner, viz. to be kept as his owne, or to keepe them at the perill of the owner. But now is Littleton to be further heard.

¶ *Et ſi tiel gardein maria le heire deins 14.ans, &c.* For if hee marry the heire after 14. hee is out of his cuſtody, and no account ſhall be made therefore.

¶ *Il accountera a luy.* Hee ſhall account for the mariage of the heire, viz. for ſo much as any man bona fide had offered for the mariage or would giue in mariage vnto him.

¶ *Ou a ſes Executors.* Note that an infant of the age of 14. may make his will (as ſome hereupon haue collected) but the meaning of Littleton is, that if after his mariage he accompliſh his age of 18. yeares at what time he may make his Teſtament, and conſtitute executors for his goods and chattells. and the words are ſo to be vnderſtood as may ſtand with Law and reaſon. Note, Executors could not haue an action of Account at the Common Law in reſpect of the priuitie of the account, but the ſtatute of W.2.ca.23. hath giuen the action of account to executors the ſtatute of 25.E.3.ca.5. to Executors of Executors, and the ſtatute of 31.E.3.ca.11. to Adminiſtrators.

7.E.3.62.
19.E.3.account 56.
38.E.3.7.
31.E.3.tit. Accounts, 57.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardein ſhall not account only for that which hee ſhall receiue in this caſe, but for which hee might receiue.

3.E.3.10.
45.E.3.Account.40.
2.R.2.Ibid.45.
6.R.2.Account 47.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value, &c.* This needeth no explanation.

If the heire in Socage be rauiſhed out of the cuſtody of the Gardein and the rauiſher marrieth the heire, the Gardein ſhall haue a writ of rauiſhment of ward, and recouer the value of the mariage, &c. and ſhall account to the heire for the ſame.

Hil.3.E.2. Coram Rege, Rot.34. Agnes Frowicks caſe F.N.B.139.I. & 140. 26.E.3.65.1.E.3.19.20.

And the Gardein in Socage is bounden by Law, that the heire bee well brought vp, and that his euidences be ſafely kept.

The Grandmother of the ſonne and heire of Iohn Berneuill who held the Mannor of Totington in the County of Midd. in Socage recouered the heire in a Rauiſhment of ward againſt Simon Cheuin which had married the ſtepmother of the heire, and by rule of the Court the plaintife Pro nutritura hæredis, & pro cuſtodia euidentiarum invenit plegios.

Trin.1.H.5 Coram Rege Rot.1.Midd.

Section 124.

¶ *ET ſi aſcun auter home que neſt pas procheine amy, &c.* If a ſtranger entreth into the lands of the infant within age of 14. and taketh the profits of the ſame, the infant may charge him as Gardein in Socage. And this doth well agree with the Writ of account againſt a Gardein in ſocage, for the words be, Idem B. prefato A. rationabilem compotum ſuum de exitibus

19.E.2.Auowry, 221.
39.E.3.16.
41.E.3.Account 35.
49.E.3.10. 18.E.3.27.
28.Aſſ.p.11. Pl.Com.542.
6.E.3.38.F.N.B.118.

¶ Et ſi aſcun auter home q̄ neſt procheine amy, occupie les terres ou tenemēts del heire come gardeine en Socage, il ſerra compell̄ de render accompt al heire, auxi bien ſicōe il fuiſſoyt procheine amy: car il neſt pas plee pur luy en briefe Daccompt adire, que il neſt procheine amie, &c. mes il reſpondra l̄ quel

And if any other man, who is not the next friend, occupies the lands or tenements of the heire as Gardein in Socage, he ſhall be compelled to yeeld an account to the heire as well as if hee had beene next friend, for it is no plea for him in the Writ of Account to ſay that he is not the next friend, &c. but hee ſhall anſwer

il

il ad occupie les terres ou tenements come gardeine en ſocage ou nemy. Sed Quære, ſi apres ceo que le heire ad accompliſh lage de 14. ans, & Gardeine en ſocage continualment occupia la terre tanque lheire vient a plein age ſ. 21. ans, ſi le heyre a ſon plein age auera action Daccompt enuers le gardeine de temps que il occupia apres les dits 14. ans, come enuers Gardeine en Socage, ou enuers luy come ſon baylife.

whether hee hath occupied the lands or tenements as Gardein in Socage or no. But *quære*, if after the heire hath accompliſhed the age of 14. yeares, and the Gardein in Socage, continually occupieth the land vntill the heire comes to full age, s. of 21. yeares, if the heire at his full age ſhall haue an action of Account againſt the gardein, from the time that he occupied after the ſaid 14. yeares, as gardein in Socage, or againſt him as his Bailife.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in ſocagio & quorum cuſtodiam idem B. habuit dum pred: A. infra ætatem fuit vt dicitur. And true it is that in iudgement of Law he had the cuſtody of the lands: and hee is called Tutor alienus, and the right Gardein in Socage tutor proprius, and it is no plea for him to denie tha. he is Procheine amy, but he muſt anſwer to the taking of the profits as Littleton here ſaith.

13.E.3.*Aer.mat* 77. 22.E.3.11. 41.E.3.*Account*.35. 10.H.7.7. 4.H.7.6.b. 7.H.7.9.4.

¶ *Sed quære, &c.* This Quære came not out of Littletons quiuer for it is euident that after the age of 14 yeares he ſhall be charged as Baillife at any time when the heire will, either before his age of 21 yeares or after.

6.E.3.38. 32.E.3.*Account* 60. 7.E.4. *F.N.B.*118.

Sect. 125.

¶ ITem ſi gardein en chiualrie face ſes executors & deuy, le heire eſteant deins age, &c. les executors aueront le garde durant le nonage, &c. Mes ſi Gardein en Socage face ſes executors, & deuy, le heire eſteant deins lage d 14. ans, ſes executors naueront pas le garde, mes vn auter procheine amy, a que le heritage ne poyt my diſcend, auera la garde, &c. Et la cauſe de diuerſitie eſt, p ceo que Gardeine en

ALſo if Gardein in Chiualrie makes his executors and die, the heire being within age, &c. the Executours ſhall haue the Wardſhip during the nonage, &c. but if the Gardeine in Socage make his Executours & die, the heire being within the age of 14. yeares, his Executors ſhall not haue the Wardſhip, but another the next friend, to whom the Inheritance cannot diſcend, ſhall haue the Wardſhip, &c. And the reaſon of this diuerſitie is be-

¶ A *Son proper vſe.* A Tenant holdeth land of a Biſhop by Knights Seruice which Signiorie the Biſhop hath in the right of his Biſhoprick, the Tenant dieth his heire within age, the Biſhop either before or after ſeiſure dieth, neither the King nor the Succeſſor of the Biſhop ſhall haue the wardſhip, but his Executors. For albeit the Biſhop hath the Signorie in auter droit, yet the Wardſhip being but a Chattell hee hath in his owne right, and a Chattell cannot go in the ſucceſſion of a ſole Corporation, vnleſſe it bee in the caſe of the King.

7.R.2.*bre*.634. 40.E.3.14. 2.H.4.19. 10.*Eliz. Dier*.277.

7.H.4.41. 44.E.3.42.

And yet if a Biſhop haue an Aduowſon, and the Church become void, and the Biſhop die, neither the Succeſſor nor the Executors ſhall preſent, but the King becauſe it is but a Thoſe in action. And ſo it is in caſe where the King hath wardſhip, but that

14.E.3.26. 44.E.3. *F.N.B.*33. *See more of this in the chapter of Warranty. Sect.*

that is a prerogatiue that belongeth to the King, to prouide for the Church being void, for where the Tenure by Knights Seruice is of a common person, the Executours of the Tenant shall present where the auoydance fell in the life of the Tenant.

¶ *Le heire est sauns remedie, &c.* For albeit in an Action of account against a Gardeine in Socage, &c. the Defendant cannot wage his Law, yet in respect of the priuitie of the matters of account, and the discharge resting in the knowledge of the parties thereunto, an action of account neither lieth against the Executors of the accountant, nor at the Common Law for the Executors of him to whom the account is to be made as is aforesaid but that is holpen by Statute.(*) It hath beene attempted in Parliament to giue an action of account against the Executors of a Gardeine in Socage, but neuer could be effected.

31.E.3 assent.57. 19.E.3 ibid.156. 48.E.3.2. 2.H.4.13. F.N.B.117. 19.H.6.5 4.E.4.25. 43.E.3.21. Lib.11.fol.89.

* Rot. parl. 50.E.3.nu.123.

¶ *Si non pur le roy solement.* (a) The reason of this is because the Kings treasure is the sinewes of warre, and the honour and safetie of the King in time of peace, firmamentum belli, & ornamentum pacis, and therefore the death of the partie shall not barre the King of his treasure due vnto him vpon the account, because it is intended that the King was busied about the publike for the good of the Common-wealth, and had not leisure to call his accountant to make his account, and nullum tempus occurrit Regi. Littleton speaketh of the Kings Prerogatiue but twice in all his Bookes, viz. here and Sect.178. and in both places as part of the Lawes of England. Prærogatiua is (b) derined of præ.i.ante, and rogare, that is to aske or demand before hand, whereof commeth prærogatiua, and is denominated of the most excellent part, because though an Act hath passed both the Houses of the Lords and Commons in Parliament, yet before it be a Law, the Royall assent must be asked or demanded and obtained, and this is the proper sence of the word. But legally (*) it extends to all Powers, Preheminences and Priuiledges, which the Law giueth to the Crowne, whereof Littleton here speaketh of one. Bracton lib.1 in one place calleth it libertatem, in another Priuilegium Regis. (c) Britton (d) (following W.1.) Droit le Roy. (e) Registr. ius Regium, and ius Regium Coronæ, &c.

(a) Fl. Com.321. Kelwey 131. Lib.11.fol.89.

Vide Sect.178 Stanf. prer. 32. (b) Fortescue. fol. 45 Rot. Parliam.1.H.4.nu.188. Fl. Com.216. Stanf. pl.com.162.b. Stanf. prer.1.a.b. & 10.b. (*) Stanf. prer.5.10.

(c) Westm.1.cap.50. (d) Britton.fol.27. (e) Regist.fol.61.&c.

Sect. 126.

¶ Item le seignior de que la terre est tenus en Socage apres le mort son tenant auera reliefe en tiel forme. Si le tenant tient per fealtie & certain rent a paier annualment &c. si les termes de paiment

Also the Lord of whom the Land is holden in Socage after the decease of his Tenant shall haue relefe in this manner. if the Tenant holdeth by fealtie, and certaine Rent to pay yearely, &c. if the tearmes of

¶ *Certeine rent.* A Tenant holdeth of his Lord certaine Lands in Socage to pay yearely a paire of gilt Spurs or fiue shillings in money at the Feast of Easter. In this case the rent is incertaine, and the tenant may pay which of them he will at the said Feast, and likewise the tenant may pay which of them he will for relefe, but if hee pay it not when he ought, then may the

43.E.3 barre 294. 9.E.4.36. Bract.lib.2 fol.35. Glanvil.lib.9.cap.4.

son

ſont a payer per deux termes del an, ou per quater termes ôl an, le Seignior auera del heire ſon tenant tant come le rent amount que il paya p an. Sicome le tenãt tient de ſon ſeignior per fealtie & x. s. de rent, payable a certaine termes del an, donques lheire paiẽ al Seignior x. s. pur reliefe, ouſter les x. s. que il paiera pur le rent.

payment bee to pay at two tearmes of the yeare, or at foure termes in the yeare the Lord ſhall haue of the heire his Tenant, as much as the Rent amounts vnto which he payeth yearly. as if the Tenant holds of his Lord by fealtie, and ten ſhillings Rent payable at certaine termes of the yeare, then the heire ſhall pay to the Lord ten ſhillings, for reliefe, beſide the ten ſhillingswhich he payeth for the Rent.

Lord diſtreine for which of them he will. But if the tenure be to attend on his Lord at the Feaſt of Chriſtmaſſe, or to pay ten ſhillings, there the reliefe muſt bee ten ſhillings, becauſe the other cannot be doubled, & ſic de ſimilibus.

¶ *A paier annuelment.* If the tenant holdeth of his Lord by fealty and to pay euery two or three yeare tenne ſhillings, albeit this be no Annuall rent, yet ſhall hee pay ten ſhillings for reliefe, & ſic de ſimilibus.

But it is to be noted, that beſide reliefe whereof Littleton here ſpeaketh, there belongeth to a tenure in ſocage of common right, aide for the making of his eldeſt Sonne a Knight at the age of fifteene yeares, & to marie his daughter at the age of ſeuen yeares.

Vide Sect. 103. F.N.B 82. Weſt. 1. cap. 35. 25. E. 3. ſtat. 5 cap. 11.

En meſme le manner eſt, ſi home ſoit ſeiſie de certeine terre que eſt tenus en Socage, & fait feoffement en fee a ſon vſe & mourſt ſeiſie del vſe (ſon heire del age de 14. ans, ou pluis) & nul volunt per luy declare, le Seignior auera reliefe del heire, ſicome auant eſt dit; Et ceſt per le ſtatute de Anno 19. Henrici 7. cap. 15.

In the ſame manner it is, if a man be ſeiſed of certain land which is holden in Socage, and maketh a feoffment in fee to his owne vſe, and dieth ſeiſed of the vſe (his heire of the age of 14. yeares or more) and no will by him declared, the Lord ſhall haue reliefe of the heire as afore is ſaid. And this by the Statute of 19. Henrie 7. cap. 15.

This is an addition to Littleton, wherefore I omit it the rather for that the Statute of 19. H.7. is for the cauſe aboue mentioned become of none effect.

Section 127.

¶ ET en tiel cas apres la mort le Tenant, tiel reliefe eſt due al Seignior maintenant, de quel age que le heire ſoit, pur ceo que tiel Seignior ne poit auer le garde de corps ne de terre

AND in this Caſe, after the death of the tenant, ſuch reliefe is due to the Lord preſently, of what age ſoeuer the heire bee, becauſe ſuch Lord cannot haue the wardſhip of the bodie, nor of the land of the heire.

¶ *Maintenant*, and as Littleton ſaith, he ought not to attend the payment of his reliefe according to the dayes of payment, but he ought to haue his reliefe preſently, and for the ſame he may incontinently diſtraine after the death of the Tenant.

And therefore in the caſe aforeſaid, where the Tenant holdeth by the Rent of fiue ſhillings, or a paire of gilt Spurres,

16. H.7. 4. 18. E. 3. 26. p. 18. Bracton. lib. 2. fol. 85. debet habere vna vice[s] reddituum ſuum vnius anni duplicatum. Britton. fol. 178. a. c. Fleta lib. 1. cap. 8.

Spurres, if the heire bee not presently (that is as presently as conueniently may, all due circumstances considered) after the death of his Ancestor readie vpon the land to pay reliefe, the Lord may distraine for which of them hee will, and if the tenant tendred either of them according to the Law, and none for the Lord was readie there to receiue it, yet the Lord may distreine for that which was tendred at his pleasure.

le heire. Et le Seignior en tiel case ne doit attendre a le payment de son reliefe, solonques les termes & iours de paiment de rent, mes il doit auer son relief maintenant, & pur ceo il poit incontinēt distraine apres le mort son tenant, pur reliefe.

And the Lord in such case ought not to attend for the payment of his reliefe, according to the termes and dayes of payment of the rent, but hee is to haue his reliefe presently, and therefore he may forthwith distreine after the death of his Tenant for reliefe.

45.E.3.19.35.H.6.52. 20.Eliz. Dier 361. Stamford. prer. 13.b. F.N.B.256.259.

¶ *De quel age que le heire soit.* And yet it appeareth in our Books that in this case the King in Case of a tenure in Socage in chiefe shall not haue primer seisin vnlesse the heire be of the age of fourteene yeares at the death of his Ancestor, for if he be vnder that age he is in the gard and custodie of his prochein amy.

But otherwise it is in case of a common person, as here it appeareth. And where in some impressions these words be added (issint que il passa lage de 14. ans) those words are added and are against Law, and no part of Littletons worke.

Section 128.

¶ *VN lib. de pepper ou cumyn.* Here it is to bee obserued that the Lord may reserue Pepper or any other things that be exotica, forreigne, of the growth of outlandish Countries, or beyond Sea, aswell as of the growth of England, where, by Nauigation the life of euery Iland is imployed. And where Littleton here putteth his case in the disiunctiue, if the tenant doth hold by fealtie and one pound of Pepper or a pound of Cummin, hee shall pay for reliefe a pound of Pepper, or a pound of Cummine ouer and besides the rent. But if the tenant holdeth of his Lord by doing of certaine worke dayes in haruest, or to attend at Christmasse or such like hee shall not doubl thee same, for of Corporall seruice or labour or worke of the tenant, no reliefe is due, but where the tenant holdeth by such yearely rents & profits, which may be paid or deliuered, whereof Littleton hath put his examples, and by them is manifestly proued that corporall seruice, worke, or labour shall not be doubled in this Case.

¶ EN Meisme le Maner est lou le tenant tient de son Seignior per fealtie, & vn li. de Peper, on Cummin, & le tenant morust, le seignior auera pur relief vn lib. de Cummin, ou vn lib. de Peper, ouster le cōmon rent. En meisme le maner est lou tenant tient a payer per an certaine number de Capons, ou de gallines, ou vn paire de gaunts, ou certaine bushels de frument, & hmodi.

IN the same manner it is, where the Tenant holdeth of his Lord by fealtie, and a pound of Peper or Cummin, and the Tenant dieth, the Lord shall haue for reliefe a pound of Cummin, or a pound of Pepper besides the cōmon rent. In the same manner it is where the Tenant holdeth to pay yearely a number of Capons or Hennes, or a paire of Gloues, or certaine bushels of Corne or such like.

¶ *Ou certaine bushels de frument.* Here it appeareth that the reliefe of bushels of Corne is to be paid presently though the tenant die in winter before Corne be ripe.

Nota

Note, here are examples put of fiue natures: 1. Aromatorum exoticorum, of spices or drugs of outlandish growth. 2. Granorum, of Corne of English growth. 3. Auium villaticarum, of Powltry, as Capons, Hens, &c. 4. Artificiorum, of handicrafts as a paire of Gloues generally either of Outlandish or English. 5. Aut similiũ, or such like (that is) like of Outlandish growth or of English growth, or of Poultrie, or of Artifices Outlandish or English, and like herein that they may be paid or deliuered to the Lord euery yeare or euery second or third yeare, &c.

Sect. 129.

¶ Mes en ascun case le seignior doit demurrer a distreiner pur son reliefe tesque a certaine temps. Sicome le teñ tient de son seignior pur vn Rose, ou p vn bushel de Roses, a paier al feast de Natiuitie de Saint John Baptist, si tiel tenant deuie en yuer, donque le sñr ne poit distr̃ p son reliefe tãque al tẽps q̃ les Roses p le course del an poiẽt aũ lour cresser, &c. & sic de similibus.

BVt in some case the Lord ought to stay to distreine for his reliefe vntill a certaine time. As if the tenant holds of his Lord by a Rose, or by a bushell of Roses to pay at the feast of St. *Iohn* the *Baptist* if such tenant dieth in Winter, then the Lord cannot distreine for his reliefe vntill the time that Roses by the course of the yeare may haue their growth, &c. and so of the like.

¶ *Per le course del an.* Lex spectat naturæ ordinem, the Law respecteth the order and course of nature, Lex non cogit ad impossibilia. The Law compells no man to impossible things. The argument ab impossibili is forcible in Law, Impossibile est quod naturæ rei repugnat. And here is to be obserued that Littlet. puts a diuersity betweene Corne and Roses, for Corne will last, and therfore the tenant must deliuer the Corne presently before the time of growth (as before is said) and so of Saffron and the like, but Roses or other flowers that are fructus fugaces, cannot be kept, and therefore are not to be deliuered till the time of growing, neither is the tenant driuen by Law artificially to preserue Roses, for the Law in these cases respecteth nature, and the course of the yeare as Littleton here saith, Et ars naturam imitatur, & sic de similibus.

Sect. 130.

¶ ITem si ascun voile demand, pur q̃ home poit tener de son seignior p fealty tantsolemẽt p touts maners des seruices, entant que quant le tenãt ferra fealtie il iurera a son Seignior q̃ il ferra a son Sñr touts maners des seruices dues, & quant il ad

ALso if any will aske, why a man may hold of his Lord by Fealty only for all manner of seruices, insomuch as when the tenant shall doe his fealty, he shall sweare to his Lord, that hee will doe to his Lord all manner of seruices due, and when hee hath done fealty in

¶ Quant le tenant ferra fealty, il iurera a son Seignior, &c. Here it appeareth that the doing of the Fealtie is both a performance of his seruice, and of his oath also when it is done for that no other seruice is due. And that one oath of fealty is taken of all that hold, and is not to be changed for any noueltie or nicety of inuention, for Iudges anciently and continually haue suppressed innouations and would in no case change the ancient Common Law.

31. E. 3. tit. Gager deliuerance, 5.
38. E. 3. 1. 42. Ass. p. 12.
4. E. 3. en. 3.
18. E. 3. en. 4. & 6.
4. H. 4. en. 2. 2. H. 4. fo. 18.

¶ Il

¶ *Il conient que il doit faire a ſon Seignieur aſcun ſeruice.* For there can be no Tenure without ſome Seruice, becauſe the Seruice maketh the Tenure.

¶ *Son eſcheat de la terre.* Eſchaeta is deriued of this word Eſchier quod eſt accidere: For an eſcheat is a caſuall profit quod accidit Domino ex euentu & ex inſperato, which happeneth to the Lord by chance, and vnlooked for. And of this word Eſchaeta, cõmeth Eſchaetor, an Eſcheator, ſo called, becauſe his office is to inquire of all caſuall profits, and them to ſeiſe into the Kings hands, that the ſame may be anſwered to the King.

See of this in the Chapter of Fee ſimple Sect. 4.

See more of this in the Chapter of Warrantie, Sect.

Lands may eſcheat to the Lord two manner of wayes: one by Attainder, the other without attainder. By Attainder in three ſorts: Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abiurauit Regnum. Thirdly, Quia vtlegatus eſt, without attainder, as if the tenant dies without heire.

¶ *Ou per caſe auter forfeiture.* As if the Land bee aliened in Mortmaine, or when Littlet wrote, if the Tenaunts had erected Croſſes vpon their houſes or tenements, in preiudice of the Lords, that the Tenaunts might claime the priuiledge of the hoſpitlers to defend themſelues againſt their Lords, they had forfeited their Tenances. But ſince Littleton wrote, the Hoſpitlers are diſſolued, and conſquently that forfeiture is gone.

W. 2. ca. 33. Flet. l. 2. ca. 43. & l. 5. ca. 34 32. H. 8. ca. 24.

¶ *Ou profit.* As Reliefe, Aid pur file marrier, aid pur faire fitz chiualer, and the like.

fait fealtie en tiel caſe nul auter Seruice eſt due. A ceo il poyt eſtre dit, Que lou vn Tenant tient ſa Terre de ſon Seignior, il couient que il doit fait a ſon Seignior aſcun Seruice, car ſi le Tenaunt ne ſes heires deuoyent faire nul manner de Seruice al Seignior ne a ſes heires, donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr fuit tenus per le ſeignior ou de ſes heires, ou nemy, & donques pluis toſt & pluis redilment voilont hões dire que la terre neſt pas tenus del Seignior ou de ſes heires, q̃ auterment: Et ſur ceo le Seignior perdra ſon Eſcheat de la terre, ou per caſe auter forfeiture ou profit que il poet auer de le terre. Iſſint il eſt reaſon que le Seignior & ſes heires ont aſcun Seruice fayt a eux, pur prouer & teſtifier que la terre eſt tenus de eux.

this caſe no other Seruice is due. To this it may bee ſayd, That where a Tenant holds his land of his Lord, it behoooueth that hee ought to doe ſome ſeruice to his Lord: For if the Tenant nor his heires ought to doe no manner of Seruice to his Lord nor his heires, then by long continuance of time it would grow out of memorie, whether the Land were holden of the Lord, or of his Heires, or not, and then will men more often and more readily ſay, That the Land is not holden of the Lord, nor of his Heires, than otherwiſe: And hereupon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which he might haue of the Land. So it is reaſon that the Lord and his heyres haue ſome Seruice done vnto them, to prooue and teſtifie, That the Land is holden of them.

Sect.

Sect. 131.

¶ Et pur ceo q̃ fealtie eſt incident a touts maners de tenures, forſpris le Tenure en Frankalmoigne, (ſi cõe ſera dit en le tenur̃ de Frankealmoigne) & pur ceo que le Seignior ne voiloit al cõmencement del Tenure auer aſcun auter ſeruice forſque Fealtie, il eſt reaſon que home poet tener de ſon Seignior per fealtie tantſolement, & quaunt il ad fait ſon fealtie, il ad fait touts ſes ſeruices.

AND for that fealtie is incident to all manner of Tenures, but to the Tenure in Frankealmoigne, (as ſhall be ſaid in the Tenure of Frankalmoign) and for that the Lord would not at the beginning of the Tenure haue any other ſeruice but Fealtie, it is reaſon that a Man may hold of his Lord by Fealtie onely, and when hee hath done his Fealtie, he hath done all his Seruices.

¶ *Fealtie eſt incident.*

Of Incidents there bee two ſorts, viz. ſeperable, and inſeperable.

Seperable, as Rents incident to reuerſions, &c. which may be ſeuered, inſeperable, as fealtie to a reuerſion or tenure which cannot be ſeuered: for as all lands and Tenements within England are holden of ſome Lord or other, and either mediately or immediately of the King, ſo to euerie tenure at the leaſt, fealtie is an inſeperable incident, ſo long as the Tenure remaines, and all other Seruices, except Fealtie, are ſeuerable. But where the tenure is by Fealtie only, there is no reliefe due for the cauſe aboueſaid.

Section 132.

¶ Item ſi vn home leſſe a vn auter pur terme de vie certaine terres ou tenemẽts ſauns parler de aſcun rent rendu a le Leſſor, vncore il ferra fealtie a le Leſſor, pur ceo que il tient de luy. Auxy ſi vn leaſe ſoit fait a vn hõe pur terme de ans il eſt dit que le Leſſee ferra Fealtie a le Leſſor, pur ceo que il tient de luy. Et ceo eſt proue bien per les parols del briefe de waſt, quaunt le Leſſour ad cauſe de porter Brieue de waſt enuers luy, le quel Brieue dira, que le Leſſee tient les Tenements de le Leſſor pur terme de ans,

ALſo if a man letteth to another lands or tenemẽts for terme of life, without naming any rent to bee reſerued to the Leſſor, yet he ſhall doe fealtie to the Leſſor, becauſe he holdeth of him. Alſo if a Leaſe bee made to a man for terme of yeares, it is ſaid that the Leſſee ſhall doe fealtie to the Leſſor, becauſe he holdeth of him. And this is wel prooued by the words of the writ of Waſt, when the Leſſor hath cauſe to bring a writ of Waſt againſt him, which Writ ſhall ſay, That the Leſſee holds his Tenements of the Leſſour for terme of yeares. So the

¶ *Si vn hõe leſſe pur terme de vie ſauns parler de rent, &c. il ferra fealtie, &c.* And the reaſon is, Becauſe there is a Tenure, & fealtie (as hath beene ſaid) is incident to al manner of tenures, & it is to bee noted, that the law for the ſuretie of

v. Sect 214.

of the Lord, that his Tenant shall be faithfull and loyall to him doth create such a service, as the Tenant shall be bound thereunto by oath.

40 E.3.34. 9.H.6.41. 10.H.6.13 9.E.4.1. 21.E.4 29. 5.H.5.12. 5.H 7.11.

¶ *Auxi si lease soit fait pur ans, &c. le lesse ferra fealty.* For there also is a tenure betweene them. And Littletons opinion in this case is holden for good Law at this day.

v.d.Sect.84.

¶ *Et ceo est proue bien per les parols del breife. &c.* Nota, the Originall Writs (are as it were) the foundations and grounds of the Law, and as it appeares here by Littleton are of great authoritie for the proofe of the Law in particular cases.

¶ *Pur ceo que il nad suer estate.* Therefore Tenant at will shall not doe Fealty (as hath beene said before) because the matter of an oath must be certaine: the rest of this Section needs no explication.

illint le briefe proua vn tenure enter eux. Mes celuy q̃ est tenãt a volunt solonqz le course del common ley, ne ferra fealty, p̃ ceo que il nad ascun suer estat. Mes autrement est de tenant a volunt solonqz l' custome del mannor, p̃ ceo que il est oblige pur faire fealty a son Sñr pur deux causes: Lun est p̃ cause del custome: & lauter est, pur ceo q̃ il prist son estate en tiel forme pur faire a son Sñr fealty.

Writ proues a tenure betweene them. But he which is Tenant at will according to the course of the Common Law shall not doe Fealtie, because hee hath not any sure estate: but otherwise it is of Tenant at will according to the custome of the Mannor, for that he is bound to doe fealtie to his Lord for two causes, the one is, by reason of the custome, and the other is for that he taketh his estate in such forme to doe his Lord fealty.

Bract. lib.2.ca.5.& lib.4.ca.2. Britton fo.164.165. Mirror ca.2. §.18. Glanvil lib.7.ca.1.& lib.12.ca 3.& 25. Fleta, lib.3.ca.5.

¶ *VN Abbe, Prior, ou auter hõe de religion ou de saint esglise.* It is to be obserued, that of Ecclesiasticall persons some bee regular, and some bee secular. They bee called regular because they liue vnder certaine rules, and haue vowed three things: true obedience, perpetuall chastity and wilfull poverty. And when a man is professed in any of the orders of Religion, he is said to bee home de religion, a man of religion or religious. Of this sort be all Abbots, Priors and others of any of the said order regular. Secular are persons Ecclesiasticall, but because they liue not vnder certain rules of some of the said orders, nor are Voluntaries,

21.H.7.39. 29.E.3.24

¶ Tenant en frankalmoigne, est lou vn Abbe ou Prior ou vn auter hõe de religion, ou d saint Eglise, tiẽt de son sñr en frankalmoigne, q̃ est adit̃ en Latin in liberam eleæmosinam. Et tiel tenure commenc̃ adeprimes en auncient temps en tiel forme; Quant vn home en auncient temps fuit seisie d certain terres ou tenements en son demesne come de fee,

Enãt in Frãkalmoigne, is where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankealmoigne: that is to say in Latin *in liberam Eleemosynam*, that is, in free almes. And such tenure began first in old time when a man in old time was seised of the lands or tenements in his demesne as of Fee, and of the same land infeoffed

4o.E.3.29.8.H.6 23. 7.E.4.18. 12.H.8.8.

& de meſmes les terres ou tenemẽts enfeoffa vn Abbe & ſon Couent, ou vn Pryor, &c. a auer & tener a eux & lour ſucceſſors a touts iours en pure & perpetual almoign, ou en frankalm ou p tiels parols; A teñ de le grantor, ou de le feoffor, & de ſes hẽes en frankalmoign: en tiels cales les tenements ſont tenus en frankalmoigne.

an Abbot and his couent, or Prior and his Couent, to haue and to hold to them and their ſucceſſors in pure and perpetuall almes, or in Frank almoigne, or by ſuch words, to hold of the grauntor, or of the leſſor and his heires in Free almes: In ſuch caſe the tenements were holden in Frankalmoigne.

they are for diſtinction ſake called ſecular, as Biſhops, Deanes and Chapters, Archdeacons, Prebends, Parſons, Vicars, and ſuch like. All which Littleton here includeth vnder theſe generall words, De ſaint Egliſe, of holy Church and none of theſe are in Law ſaid to be homes de religion or religious.

Where Littleton ſaith (infeoffa vn Abbe & ſon couent) his meaning is that the Abbot only is infeoffed, for he is only a parſon capable and the Couent are dead perſons in Law, and haue power of aſſent only, and that they thereunto aſſent. But ſince Littleton wrote, all Abbyes, Priories, Monaſteries, and other religious houſes of Monkes, Canons, Friers, and Nunnes, &c. haue bin diſſolued, & their poſſeſſions giuen to the Crowne.

See the ſtatutes of 27.H.8. not printed but in the abridgement 31.H.8.cap.13. & 32.H.8.ca.24 &c. Vid.Sect.530.

The Eccleſiaſticall ſtate of England, as it ſtandeth at this day (which is neceſſarie for our ſtudent to know) is deuided into two Prouinces, or Archbiſhopricks, (viz.) of Canterbury, and of Yorke. The Archbiſhop of Canterbury is ſtiled, Metropolitanus & primas totius Angliæ; And the Archbiſhop of Yorke Primas Angliæ. Each Archbiſhop hath within his Prouince ſuffragan Biſhops of ſeuerall Dioceſſe. The Archbiſhop of Canterbury hath vnder him within his Prouince, of ancient foundations, viz. Rocheſter his principall Chaplaine. London his Deane, Wincheſter his Chancellor; Norwich, Lincolne, Ely, Chicheſter, Saliſbury, Exeter, Bathe and Wells, Worceſter, Couentry and Lichfield, Hereford, Landaffe, St. Dauid, Bangor, and St. Aſſaphe, & foure founded by King H.8. erected out of the ruines of diſſolued Monaſteries (that is to ſay) Glouceſter, Briſtowe, Peterborow, and Oxford. The Archbiſhop of Yorke hath vnder him foure, (viz.) the Biſhop of the County palatine of Cheſter newly erected by King H.8. and annexed by him to the Archbiſhopricke of Yorke, of the County palatine of Durham, Carlile, and the Iſle of Man annexed to the Prouince of Yorke by H.8. but a greater number this Archbiſhop anciently had, which time hath taken from him. The extent of euery Dioceſſe you may elſewhere reade, the which for breuitie I here omit. All the ſaid Archbiſhoprickes, and Biſhoprickes of England were founded by the Kings of England to hold by Barony as hereafter ſhall be ſaid.* And euery Archbiſhop and Biſhop hath his Deane and Chapter, whereof more ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the precedencie, next to him the Archbiſhop of Yorke, next to him the Biſhop of London, and next to him the Biſhop of Wincheſter, and then all other Biſhops of both Prouinces after their ancientneſſe.

*Math. Parker de vitis Archiepiſcoporum. Linwood. Camden Britania. Vid. Rot. Parliam. anno 36.H.8.1.E.6 5.E.6. &c. Weſtminſter alſo was new y erected a Biſhopricke by H.8. but by Queene Mary it was reſtored to be an Abby and by Queene Eliz. created a Deany Collegiate. Cheſter had beene anciently a Biſhops ſea and long ſince tranſlated to Couentry. 33.H.8.ca.31. Camden vbi ſupra. 26.H.8. firſt fruites and tenths. Vid Sect.137. * Lib.3.fo.73. Deane and Chapt. of Norwiches caſe. Vid.Sect.134.201. 31.H.8.ca.10.*

Euery Dioceſſe is deuided into Archdeaconries, whereof there be 60. and the Archdeacon is called oculus Epiſcopi, and euery Archdeaconry is parted into Deanries, and Deanries againe into Pariſhes, Townes and Hamlets. And thus much for the better vnderſtanding of our Author, and how the ſtate Eccleſiaſticall ſtandeth at this day, ſhall ſuffice.

Vid. more hereof, Sect.180. 528.648. &c.

¶ *Frnkalmoigne, que eſt a dire en Latyne, in liberam Eleemoſinam.* In Engliſh in free Almes. There is an officer in the Kings houſe called Eleemoſinarius vulgarly called the Kings Almner (whoſe office and dutie is excellently diſcribed in ancient Authors) viz. Fragmenta diligenter colligere & eſt diligenter diſtribuere ſingulis diebus egenis, ægrotos, & leproſos, incarceratos, paupereſque viduas, & alios egenos vagoſque in patria commorantes charitatiue viſitare; item equos relictos, robas, pecuniã, & alia ad Eleemoſinã largita recipere, & fideliter diſtribuere, debet etiam regem ſuper Eleemoſinæ largitione crebris ſummonitionibus ſtimulare, præcipue diebus ſanctorũ, & rogare ne robas ſuas, quæ magni ſunt pretij, hiſtrionibus, blanditoribus, accuſatoribus, ſeu meniſtrallis, ſed ad Eleemoſinæ ſuæ incrementũ jubeat largiri.

Fleta lib.2.ca.23.

All Eccleſiaſticall perſons may hold in Frankalmoigne be they Secular or Regular, & no lay perſon can hold in Frankalmoigne. This adiective (liber) doth diſtinguiſh many things in Law from others, as here libera Eleemoſina are words appropriated to this caſe, and doth diſtinguiſh it from a tenure by diuine ſeruice, liberum tenementum, from a tenure in villenage, or by Copihold or baſe tenure, liberum fœdum franke fee, from a tenure in ancient Demeane, li-

Vid. Sect.1. Bracton lib.4.ca.37.38. Britt. ca.32.

Bruton.cap.66.
Bracton.lib.4.F.N.B.150.
Brast lib.4.fol.288.247.
292. Britton.fol.245.
Fleta.lib.5.cap.21.
Fortescue cap.26. 24.E.3.34.
43.E.3.cmsir.11.
27.Ass 59. Stanf.175.
Vide Sect.199.
Fleta.lib.1.cap.47.

berum maritagium, from other estates taile, libera firma, franke ferme, when an estate is changed from Knights Seruice to Socage, liberum socagium, from a tenure by seruice in Chiualrie. Francus bancus to distinguish it from other Dowers, for that it commeth freely without any act of the husbands, or assignement of the heire. Libera lex, to distinguish men, who enioy it, and whose best and freest birthright it is, from them, that by their offence haue lost it, as men attainted in an attaint, in a conspicacie vpon an Indictment, or in a Premunire, &c. And so of libera capella, francus plegius, frankpledge, libera chasea, free Chase, liber burgus, liber aper, liber taurus, and the like. But in a matter (some will say) of curiositie, this shall suffice, and yet seeing, it tends to the better vnderstanding (others say) it is tolerable.

Glanuil.lib.7.cap.1.fol.44-45.acc.

Britton.cap.66.fol.164.
Bract.lib..2.cap.5.&,10.
N.N.B.211.

By the ancient Common Law of England, a man could not alien such lands as he had by discent without the consent of his heire, yet he might giue a part to God in free Almoigne, or with his daughter in free mariage, or to his seruant in remuneratione seruitij. Our old Bookes described Frankalmoigne thus, when Lands or Tenements were bestowed vpon God, (that is) giuen to such people as are consecrated to the seruice of God. In our ancient Bookes these gifts of deuotion were called Churchesset, or Churchsed, quasi semen Ecclesiæ, but in a more particular sence, it is described thus. Certam mensuram bladi tritici significat, quam quilibet olim sanctæ Ecclesiæ die sancti Martini tempore tam Britonum quam Anglorum contribuerunt: plures tamen Magnates post Romanorum aduentum illam contributionem secundum veterem legem Moisi nomine primitiarum dabant prout in breui Regis Knuti ad summum Pontificem transmissum continetur, in quo illam contributionem Churchsed appellant quasi semen Ecclesiæ.

Fleta lib.1.cap.42.

¶ *Et tiel tenure.* For albeit neither fealtie nor any other temporall seruice is due, yet it is a tenure.

7.E.4.12.33. H.6.6.7.
39.H.6.29.

¶ (a) *En ancient temps.* That is to say before the statutes of Mortmayne, viz. Magna Charta, cap.36. & 7.E.1. de religiosis, &c. and before the Statute of Quia emptores terrarum, as shall be hereafter in his proper place said in this Chapter.

(a). Mortmaine.
Britton.fol.32.& 90.
Bracton.lib.2.cap.5.
Fleta.lib.3.cap.5.

¶ *Enfeoffa vn Abbe & son Couent, &c.* Albeit the Couent bee dead persons in Law, and the Abbot only capable (as before is said) yet if the feoffement be made to an Abbot and Couent, the feoffement is good, and the state vesteth only in the Abbot. And note a man may infeoffe an Abbot, a Bishop, a Parson, &c. or any other sole bodie politique by deed or without deed in free Almes, and so may a gift in frankmariage be made without deed also: but if Lands be giuen to a Deane and Chapter, or any other Corporation aggregate of many, there the gift must be by deed.

11.H.7.12.

39.H.6.30.b.

¶ *A auer & tener a eux & a lour successors.* For in case of an Abbot or Prior and Couent regularly a Fee Simple doth not passe without these words (Successors) for the diuersitie standeth thus betweene a Corporation aggregate of many capable persons, and a sole Corporation. As if Lands be giuen to a Deane and Chapter, they haue a fee simple without these words (successors) for that the bodie neuer dies, but if Lands be giuen to a Bishop, Parson, or any other sole Corporation, who after their deceases haue a succession, there without these words (Successors) nothing passeth vnto them but for life. But of Corporations aggregate of many there is a diuersitie when the head and bodie both are capeable, as in the case of Deane and Chapter, and when one as hath beene said is only capeable, as in case of Abbot or Prior and couent, but yet out of the generall rules the case of Frankalmoigne is excepted as hereafter shall be said. Also Lands must bee giuen to a Corporation aggregrate of many by Deed, but to a sole Corporation it may be granted without Deed

Vide Litt. in the Chapter of Fee simple. Sect.1.2.

39.H.6.30.

Bracton lib.2.cap 10. Potest donatio fieri in liberam Eleemosinam Ecclesijs Cathedralibus, Conuentualibus, Parochialibus & viris religiosis.

¶ *En pure & perpetuall almoigne.* Here it appeareth that a tenure in Frankalmoigne may be created without this word (libera) for pura implyeth as much.

11.H.6.56.7.E.4.11.
Vide Bracton.lib.2.cap.10.

¶ *Ou en Frankalmoigne.* But one of these words either pura or libera, must be vsed or else it is no tenure in Frankalmoigne.

15.H.6.56.7.E.4.11.
Bract.vbi supra.44.E.3.24.

¶ *Ou per ceux parolx a tener de le grantor ou feffor & ses heires en Frankalmoigne.* Here it appeareth that by these words a fee simple passeth without these words (Successors) albeit it be in case of a sole Corporation. For as in case of a gift in Frankmariage, an Estate taile passeth to the Donees without words of heires of their two bodies, as hath beene said in the Chapter of Fee taile, so in case of a gift in Frankalmoigne (which may be resembled to a diuine mariage) a Fee simple passeth, as hath beene said, though it be in case of a sole Corporation without this word (Successors.) And besides grants in Frankalmoigne are ancient Grants as hath beene said, and therefore shall bee allowed as the Law was taken when such Grants were made.

20.H.6.fol.36.

38.E.3.4.a. 14.H.6.12.
10.H.7.13. 16.H.7.9.
18.E.2.consuetud.39.
13.H.6.22. 17.E.3.51.
6.E.2.54. &c.
Tr.5.E.3 Rot.4.in Scaccario.
The Prior of Dunstables case.

Sect. 134.

¶ EN Mesme le Manner est, lou terres ou tenements fueront grant en ancient temps a vn Deane & Chapter, & a lour successors, ou a vn Parson dun Eglis, & a ses successors, ou a ascun auter home de saint Eglis, & a ses Successors en frankalm̃ si il auoit capacitie dapprẽdr̃ tielsgrãts ou feoffements &c.

IN the same manner it is where Lands or tenements were granted in ancient time to a Deane and Chapter & to their Successours, or to a Parson of a Church & his successors, or to any other man of holy Church, and to his successours in Frankalmoigne, if hee had capacitie to take such graunts or feoffements, &c.

¶ EN *Mesme le Manner, &c.* Here Littleton hauing put an example of bodies incorporate aggregate of many whereof the head is only capable now putteth examples, both of bodies incorporate, aggregate of many (all being capable and of sole Corporations of Secular persons.

¶ *Deane. Decanus* is derived of the Greek word δεκα that signifieth Ten, for that hee is an Ecclesiasticall Secular Gouernour, and was anciently ouer ten Prebends or Canons at the least in a Cathedrall Church, and is head of his Chapter.

¶ *Chapter. Capitulum est Clericorum congregatio sub vno Decano in Ecclesia Cathedrali.* And Chapters be twofold, viz. the Ancient, and the later. And the later be also of two sorts, first, those which were translated or founded by King Henry the Eight, in place of Abbots and Couents, or Priors and Couents, which were Chapters whiles they stood, and these are new Chapters to old Bishoprickes. Secondly, where the Bishopricke was newly founded by Henry the Eight (as Chester, Bristow, &c.) there the Chapters are also new. There is a great diuersitie betweene the commings in of the ancient Deane, and of the new. For the ancient come in in much like sort as Bishops doe: for they are chosen by the Chapter by a conge de eslier as Bishops be, and the King giuing his Royall assent, they are confirmed by the Bishop. But they which are either newly translated or founded, are Donatiue, and by the Kings Letters Patents are installed, which are matters necessary to be knowne.

¶ *Sil auoit capacitie a prender.* For Ecclesiasticall persons haue not capacitie to take in succession, vnlesse they be bodies Politique, as Bishops, Archdeacons, Deanes, Parsons, Vicars, &c. or lawfully incorporate by the Kings Letters Patents or prescription, as Deanes and Chapters, Colledges, &c. But a Colledge of religious persons, Chauntrie Priests, and such like, that are not lawfully incorporated, but only consist in vulgar reputation haue no capacitie to take succession, therefore Littleton added materially (sic ad capacitie à prender.)

Sect. 135.

¶ ET tiels q̃ teignont en frankalmoigne sont oblige de droit deuant dieu de fair orisons, prairers mess. & autres diuine seruices pur les almes de lour grantor ou feoff. & pur les almes de lour heires

AND they which hold in Frankalmoigne, are bound of right before God, to make Orisons, Prayers, Masses, and other diuine Seruices for the soules of their Grantor or Feoffor, and for the soules of their heires

¶ IN this Section there appeareth a diuision of Tenures, that is to say, some be spirituall, and some be temporall. And of spirituall some be incertaine, as tenures in Frankalmoigne, and some be certaine, as tenure by diuine Seruice. Againe diuine seruice certaine is twofold, either spirituall as Prayers to God, or temporall, as distribution of almes to poore people.

¶ Ob-

¶ *Oblige de droit.* That is they are compellable by the Ecclesiasticall Law to doe it, and therefore it is said that they are bound of right, for want of remedy, and want of right is all one, and the Common Law (as here it appeareth) taketh knowledge of the Ecclesiasticall Law in that behalfe.

¶ *De faire Orisons, Prayers, Messes, & auters Diuine Seruices.* Since Littleton wrote, the Lyturgie or Booke of Common Prayer and of Celebrating Diuine Seruice is altered; this alteration notwithstanding, yet the tenure in Frankalmoigne remaineth, and such Prayers and diuine Seruice shall be said and celebrated as now is authorised, yea, though the tenure be in particular, as Littleton (a) hereafter saith, viz. A Chaunter vn messe, &c. ou a Chaunter vn placebo & dirige, yet if the tenant saith the Prayers now authorised it sufficeth. And as Littleton (b) hath said before in the case of Socage the changing of one kind of temporall seruices into other temporall seruices, altereth neither the name nor the effect of the tenure: so the changing of spirituall seruices into other spirituall seruices, altereth neither the name nor effect of the tenure. And albeit the tenure in Frankalmoigne is now reduced to a certaintie contained in the Booke of Common Prayer, yet seeing the originall tenure was in Frankalmoigne, and the change is by generall consent by authoritie of Parliament, (c) whereunto euery man is partie, the tenure remaynes as it was before.

(a) Vide Sect. 137.

(b) Vide Sect. 119.

(c) 2.E.6.cap.1.5.& 6.E.6. cap.1.1.Eliz cap.2.

¶ *Ne ferront aſcun fealtie.* Herein Tenant in Frankalmoigne differeth from a Tenant in Frankmariage, for tenant in Frankmariage shall doe fealtie, as hath beene said in the Chapter of Fee tayle, but tenant in Frankalmoigne, shall not doe any, or any other thing, but deuota animarum ſuffragia.

¶ *Tiel diuine ſeruice eſt melieur per eux.* And it is also said in our Bookes (d) Que Frankalmoigne eſt le pluis haute ſeruice, and this was confessed by the Heathen Poet.

(d) 33.H.6.6. 13.E.1.tit. ennuit.de voucher.118.

———ſuit hæc ſapientia quondam
Publica priuatis ſecernere, ſacra profanis.

And certaine it is, that Nunquam res humanæ proſperè ſuccedunt vbi negliguntur diuinæ.

Section 136.

¶ *LE Seignior ne Poet eux diſtreiner pur ceſt non feaſant, &c.*

¶ *Diſtreine.* The

¶ CEt ſi tiels que teignont lour tenements en Frankalmoigne ne voilõt ou failont ô faire tiel

And if they which hold their Tenemẽts in frankalmoigne will not or faile to do ſuch diuine ſeruice (as

diuine ſeruice (cõe eſt dit) le ſñr ne poit eux diſtrainer p̃ cel non ſeſant, &c. pur ceo que neſt mis en certaine quelx ſeruices ils doient faiť, mes l'ſñr de ceo poit complaine a lour ordinarie ou viſitour, luy prayant que il voiloit mitter puniſhment & correction d̃ ceo, & auxy de prouider q̃ tiel negligence ne ſoit pluis aũt fait, &c. Et lordinary ou viſiť de droit ceo doit faire, &c.

is ſaid) the Lord may not diſtrain them for not doing this, &c. becauſe it is not put in certeyntie what ſeruices they ought to do: but the Lord may complaine of this to their Ordinary or viſitour praying him that he will lay ſome puniſhment and correction for this, & alſo prouide that ſuch negligẽce be no more done &c. And the ordinary or Viſitor of right ought to doe this, &c.

word Diſtreſſe is a French word, in Latyn it is called diſtrictio ſive anguſtia; becauſe the cattell diſtreyned are put into a ſtreight, which we call a pownd.

¶ *Pur ceo que neſt miſe in certaine queux ſeruices ils doient faire.* It is a Maxime in Law that no diſtreſſe can bee taken for any ſeruices that are not put into certaintie (e) nor can bee reduced to any certaintie for Id certum eſt quod certum reddi poteſt; for (f) oportet quod certa res deducator in iudiciũ; & vpon the auowrie, Damages cannot be recouered for that, which neither hath certaintie nor can be reduced to any certainty, and yet in ſome caſes there may bee a certainty in vncertainty, as a man may hold of his Lord to

(e) 35.H.6.37. Br. tit. offices 4. 8.E.3.3.56. 20.E.3. Auowrie 131.
(f) Bracton fol. 230. & 328.

7.E.3.38.

ſheare all the ſheepe depaſturing within the Lords Mannor, and this is certaine enough, albeit the Lord hath ſometime a greater number, and ſometime a leſſer number there, and yet this incertaintie being referred to the Mannor which is certaine, the Lord may diſtraine for this vncertaintie. Et ſic de ſimilibus.

¶ *Poet complayner.* (That is) to complaine in courſe of Juſtice, according to the Eccleſiaſticall Law.

¶ *A lour ordinarie.* Ordinarius, and ſo he is called (g) in the Eccleſiaſticall Law, Quia habet ordinariam juriſdictionem in jure proprio, & non per deputationem; the name we haue anciently taken from the Canoniſts, and doe apply it only to a Biſhop or any other that hath ordinary turiſdiction in cauſes Eccleſiaſticall; In this caſe of Littleton it is to be obſerued that the Law doth appoint euery thing to be done by thoſe, vnto whoſe office it properly appertaineth, and foraſmuch as it belongeth to the office of the Ordinarie in this caſe to ſee diuine ſeruice ſaid, and to compell them to doe it by Eccleſiaſticall cenſures, therefore complaint is to be made vnto him. Here and in the next Section it appeareth, that for deciding of Controuerſies, and for diſtribution of Juſtice within this Realme, there bee two diſtinct turiſdictions, the one Eccleſiaſticall limitted to certaine ſpirituall and particular caſes (of the one whereof our Author here ſpeaketh) and the Court wherein theſe cauſes are handled is called Forum eccleſiaſticum. The other turiſdiction is ſecular and generall, for that it is guided by the common and generall Law of the Realme, Quæ pertinet ad coronam & dignitatem regis, & ad regnum in cauſis & placitis rerum temporalium in foro ſeculari. So as in this caſe put by our Author, the Lord hath remedy for his diuine ſeruice (albeit they iſſue out of temporall lands) in foro eccleſiaſtico, by the Eccleſiaſticall Law, otherwiſe the Lord ſhould be without remedy. Yet the Common Law, to the intent that Eccleſiaſticall perſons might the better diſcharge their dutie in celebration of diuine ſeruice, and not to bee intangled with temporall buſineſſe, hath prouided, that if any of them be choſen to any temporall office hee may haue his writ De clerico infra ſacros ordines conſtituto non eligendo in officium, &c and thereof bee diſcharged.

(g) Mirror. ca. 5. §. Britton lib. 5. fo. 405. & c. Fleta lib. 2. ca. 50. & 55. & lib 6. ca. 38. Britton, fo. 69. 72. W 2. ca. 19. 17.E.2.bre.822. Regiſt. 141 Lindwood tit. de Conſtitut. cap exter. Bracton. lib. 5. ca. 2. fo. 400. & 401. and the other Authors aboueſaid.

Regiſt. orig. 187.

¶ *Ou Viſitor.* That is, where the King or any of his Progenitors is Founder of the houſe, there the Ordinary regularly ſhall not viſit them, but the Chancelour of England is appointed by Law to be Viſitor of them, or where a ſpeciall Viſitor is appointed vpon the foundation, the complaint muſt be made to the Viſitor.

27.E.3.84.85. Regiſt. 40. F.N.B. 42.10. Ebor. Dier. 273. 16.E.3.bre. 660. 21.E.3.60. 6.H.7.13. 8.Aſſ.29. Brooke tit. Premunire 21.

¶ *De droit doit ceo faire.* De droit, of right, (that is to ſay) he ought to doe it by the Eccleſiaſticall Law in the right of his office.

And here is implied a Maxime of the Common Law, that where the right, as our Author here ſpeaketh is ſpirituall, and the remedy therefore only by the Eccleſiaſticall Law, the conuſans thereof doth appertaine to the Eccleſiaſticall Court. Sect.137.

Sect. 137.

2.E.3.27,28.

¶ *PEr certaine Diuine Seruice destre fait, sicome a chaunter vn messe, &c. ou de distribater en Almoign, &c.* Here be the two parts aboue mentioned, of diuine Seruice, and for this Diuine seruice certaine, the Lord hath his remedie, as here it appears by our Author in foro seculari: for here it appeareth, that if the Lord distreyne for not doing of diuine Seruice, which is certain, hee shall vpon his Auowrie recouer dammages at the Common Law, that is, in the Kings Temporall Court, for the not doing of it. And if issue be taken vpon the performance of the Diuine Seruice, it shall be tried by a Jurie of twelue men, because albeit the Seruice be Spirituall, yet the dammages are temporall, and so is the Seigniorie also.

38.H.6.26,27.

2.E.6.ca.13. versus finem. 13.E.3.ca.5. 11.H.7.ca.8. 1.El.ca.2.13.El.ca.1. 23.El.ca.1.1.Iac.11.& 12.

And here is implied another Maxim of the Law, that where the Common or Statute Law giueth remedie, in foro seculari, (whether the matter be Temporall or Spirituall) the Conusans of that cause belongeth to the Kings Temporall Courts only, vnlesse the iurisdiction of the Ecclesiastical Court be saued or allowed by the same statute, to proceed according to the Ecclesiasticall Lawes.

¶ *Ou de distributer en almoigne al cent pours homes.* Here note that the Almes & Reliefe of poore people being a worke of charitie, is accounted in Law diuine Seruice, for what herein is done to the Poore for Gods sake, is done to God himselfe.

¶ *Poet distrein, &c.* Here (&c.) includeth many

¶ MEs si vn Abbe ou Prior tient de son Seignior per certain diuine Seruice en certaine dest̃ fait, sicome a chaunter vn messe chescun vendī die en le Semaine pur les Almes, vt supra, ou chescun an a tiel iour a chaunter placebo & dirige, &c. ou de trouer vn chapleine de chanter messe, &c. ou de distributer en Almoign̄ al cent pours homes cent deniers a tiel iour, en tiel case, si tiel Diuine Seruice ne soit fayt le Seignior poet distreyner, &c. pur ceo que le Diuine Seruice est mise en certaine per lour Tenure, que le Abbee ou Prior deuoit fair̄. Et en tiel case le Seignior auera Fealtie, &c. come il semble. Et tiel Tenure nē passe dit Tenure en Frankalmoigne, eins est dit Tenure per Diuine Seruice, car en Tenure en Frankalmoigne nul mention est fait dascun manner de Seruice, car nul poet tener en Frankealmoigne

BVt if an Abbot or Prior holds of his Lord by a certaine diuine Seruice, in certaine to be done, as to sing a Masse euerie Fryday in the weeke, for the Soules, *vt supra*, or euerie yeare at such a day to sing a *Placebo & Dirige*, &c. or to find a Chaplaine to sing a Masse, &c. or to distribute in almes to an hundred poore men an hundred pence at such a day. In this case if such Diuine Seruice bee not done, the Lord may distreyne, &c. because the Diuine Seruice is put in certaine by their Tenure, which the Abbot or Prior ought to doe. And in this case the Lord shal haue Fealtie, &c. as it seemeth. And such Tenure shall not bee said to bee Tenure in Frankealmoigne, but is called Tenure by Diuine Seruice: For in Tenure in Frankealmoigne, no mention is made of any manner of Seruice: For none can hold in Frankealmoigne, if there be expressed any manner

moigne, si soit expresse aſcun mañ ō ctain ſeruice que il doit faire, &c. of certaine Seruice that he ought to doe, &c.

excellent things, as when, where, and what may bee diſtreined, of al which there is a taſt giuen in their proper places.

¶ *En tiel caſe le Seignior auera fealtie, &c. come ſemble.* For as it hath beene ſaid, Fealtie is incident to euerie Tenure ſauing the Tenure in Frankalmoigne, and where the Lord may diſtreyne, there is Fealtie due. And Britton calleth this Tenure (by Diuine Seruice) Aumone, and not libera Eleemoſina. And ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſeruice eſt retenue al feoffor. Brit. fo. 164.

¶ *&c.* And here (&c.) implieth, Diſtreſſe, Eſcheat, and the like. 33.H.6.

¶ *Et tiel Tenure neſt paſſe dit Tenure en Frankalmoigne, eins eſt dit tenure per Diuine ſeruice, &c.* And therefore our old Booke diuided Spirituall Seruice into Free almes, (which was free from any limitation of certaintie) and almes, becauſe the Tenants were bound to certaine diuine Seruices. Brit. ca. 66.

¶ *Si ſoit expreſſe aſcun manner de certaine ſeruice.* This holdeth where the certaintie is reſerued vpon the originall Grant. If lands were giuen to hold In libera Eleemoſina reddendo, a rent, it ſeemeth the reſeruation of the rent to be void,* becauſe it is repugnant and contrarie to the former grant in libera Eleemoſina. 13.E.1. Count de Vauch. 118. *13.H.4.11. Meſne 73. 30.E.3.30. 19.E.2 Auowrie 224. 32.E.1. Taile 31. 26. Aſſ.66. 4.H.6.17.

Vide Trin.4.E.3. and F.N.B.231.f. That an Abbot or Prior that hold in Frankalmoigne, ſhall not be charged with a Corodie. Also lands holden in Frankalmoign cannot (l) be antient Demeine, in reſpect of charges incident thereunto. Trin.4.E.3. F.N.B.231 f. 15.E.3.Corody 4. 11.Aſſ.22.50. Aſſ.P. 6. (l) 32.E.1.ant.Dem.39. 8.E.3.5.

¶ *Que il doit faire, &c.* Here by (&c.) is vnderſtood Temporall or Spirituall Seruice, alſo which he ought to doe corporally, or render or pay.

There were within this Realme of England one hundred and eightene Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by writ, were Lords of Parliament, and had places and voyces there: And of them there were twentie ſeuen Abbots, and two Priors, as by the Rolles of Parliament appeare. But ſince our Author wrote, all theſe (as hath beene ſaid) are diſſolued. King * Stephen did found the Abbey of Feuerſham in Kent, Et dedit Abbati & Monachis, & ſucceſſoribus ſuis Manerium de Feuerſham Com Kanc', ſicut cum Hundredo, &c. tenendum per Baroniam, &c. who albeit he held by a Baronie, yet becauſe he was neuer (that I (m) find) called by writ, he neuer ſate in Parliament. * For example, Rot.Parl. 5.H.8. & 21.H.8, &c. (m) (Nec.Pat.30.E.1. ser.regestia fundatorum ufs pleaded.

All the Archbiſhops and Biſhops of England haue bin founded by the Kings of England and doe hold of the King by Baronie (as before hath beene ſaid) and haue beene all called by writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) taking one notable Record, (o) Mandatum eſt omnibus Epiſcopis qui conuenturi ſunt apud Glouceſtriam, die Sabbathi in Craſtiñ Sanctæ Katherinæ, firmiter inhibendo quod ſicut Baronias ſuas quas de Rege tenent, diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum concilij ſui contingunt, ſcituri pro certo, quòd ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege apud Hereford, 23. Nouemb. &c. And the Biſhoppicks in Wales were founded by the Princes of Wales: and the Principalitie of Wales was holden of the King of England, as of his Crowne: and when the Prince of Wales committed Treaſon, Rebellion, &c. the Principalitie was forfeited, and the Patronages of the Biſhops annexed to the Crowne of England, ſo as the King is to haue Penſions for his Chaplaines, and Corodies for his Vadelets of them, as of Biſhops founded by himſelfe. And vide Mich. 10.H.4. Rot. 60. Wallia coram Rege, that the iudgement was giuen accordingly againſt the Biſhop of Saint Dauids, in Wales, Per Iuſticiarios de vtroque Banco & alios de perito concilio Domini Regis. And the Biſhops of Wales are alſo called by writ to Parliament, and are Lords of Parliament as biſhops of England be. (o) Ex Rot.Pat. de anno 18.H.3.M.17. 10.H.4. fo 6.b.

Section 138.

¶ ITem ſi ſoit demandé, ſi teñ en frankmariage ferra fealtie a le doñ ou a

ALſo if it bee demanded, if tenant in frankmariage ſhall doe fealtie to the do-

¶ *LE quel ſerra inconuenient, &c.* An argument drawne from an inconuenience is forcible in Law as hath beene obſerued V.Sect.87.139.201.269. 442.478.665.722.

* 40. Aſſ 29.

Littleton ſo.50.b. 42.E.3.5. 28.E.3.305. 22.H.6.28.

ued before, and ſhall bee often hereafter. Nihil quod eſt inconveniens eſt licitum. And the Law that is the perfection of reaſon cannot ſuffer any thing that is inconuenient.

It is better ſaith the Law to ſuffer a miſchiefe (that is particular to one) then an inconuenience that may preiudice many. See more of this after in this chapter.

Note the reaſon of this diuerſitie betweene Frankalmoigne and Frankmarriage ſtandeth vpon a maine Maxime of Law, that there is no land, that is not holden by ſome ſeruice ſpirituall or tempozall, and therefore the Donee in Frankmariage ſhall doe Fealty, for otherwiſe hee ſhould doe to his Lord no ſeruice at all, and yet it is Frankmariage, becauſe the Law createth the ſeruice of Fealty for neceſſity of reaſon, and auoyding of an inconuenience. But tenant in Frankalmoigne doth ſpirituall and diuine ſeruice which is within the ſaid Maxime and therefore the Law will not cohoꝛt him to doe any tempoꝛall ſeruice. See the next Section.

¶ *Et enconter reaſon.* And this is another ſtrong argument in Law. Nihil quod eſt contra rationem eſt licitum. For reaſon is the life of the Law, nay the Common Law it ſelfe is nothing elſe but reaſon, which is to be vnderſtood of an artificiall perfection of reaſon gotten by long ſtudie, obſeruation and experience and not of euery mans naturall reaſon, for nemo naſcitur artifex. This legall reaſon eſt ſumma ratio. And therefoꝛe if all the reaſon that is diſperſed into ſo many ſeuerall heads were vnited into one, yet could hee not make

ſes heires deuant le quart degree paſſe, &c. il ſemble que cy: Car il neſt pas ſemble quant a cel entẽt a tenant en frankalmoigne, pur ceo que tenant en frankalmoigne ferra, p cauſe de ſa tenure, diuine ſeruice pur ſon Sñr come deuant eſt dit, & ceo il eſt charge a faiꝛ p la ley del ſaint eſgliſe, & pur ceo il eſt excuſe & diſcharge de fealtie, mes tenant en frankemariage ne ferra pur ſon tenure tiel ſeruice, & ſil ne ferra fealtie, donqꝛ il ne ferra a ſon Seigniꝛ aſcun mãner de ſeruice, ne ſpiritual ne tempoꝛal, le quel ſerroit inconuenient & encount reaſon que home ſerra Tenant deſtate denheritance, a vn auter & vncoꝛe k ſñr auera nul maner de ſeruice de luy, & iſſint il ſemble que il ferra fealtie a ſon ſñr deuant le quart degree paſſe. Et quãt il ad fait fealty il ad fait touts ſes ſeruices.

nor or his heires before the fourth degree be paſt, &c. it ſeemeth that he ſhall, for he is not like as to this purpoſe to tenant in frankalmoigne, for tenant in frankalmoigne by reaſon of his tenure ſhall doe diuine ſeruice for his Lord, (as is ſaid before) and this hee is charged to doe by the Law of holy Church, and therefore he is excuſed and diſcharged of fealty, but tenant in frankmariage ſhall not doe for his tenure ſuch ſeruice, and if he doth not fealty, he ſhall not doe any manner of ſeruice to his Lord neither ſpiritual nor temporall, which would be inconuenient, and againſt reaſon, that a man ſhall be tenant of an eſtate of inheritance to another, and yet the Lord ſhall haue no manner of ſeruice of him. And ſo it ſeemes he ſhall doe fealtie to his Lord before the fourth degree be paſt. And when hee hath done fealtie, he hath done all his ſeruices.

ſuch a Law as the Law of England is, becauſe by many ſucceſſion of ages it hath beene refined and refined by an infinite number of graue and learned men, and by long experience growne to ſuch a perfection for the gouernment of this Realme, as the old rule may be iuſtly verified of it Neminem oportet eſſe ſapientiorem legibus: No man (out of his owne priuate reaſon) ought to be wiſer than the Law, which is the perfection of reaſon.

Sect.

Sect. 139.

CEt ſi vn Abbe tient de ſon Sñr en frankalm. et Labbe et le couent ſouth lour common ſeale alien meſmes les tenements a vn ſeculer home en fee ſimple, en ceo cas le ſeculer home ferra fealtie a l' Seignior, pur ceo que il ne poit tener de ſon Sñr en frankalmoigne. Car ſi le ſeignior ne doit auer de luy fealty, donque il auera nul manner d ſeruice que ſerroit inconuenient, ou il eſt Sñr, & le tenement eſt tenus de luy.

AND if an Abbot holdeth of his Lord in frankalmoign, and the Abbot and Couent vnder their cõmon ſeale alien the ſame tenements to a ſecular man in fee ſimple. In this caſe the ſecular man ſhall doe fealtie to the Lord, becauſe hee cannot hold of his Lord in frankealmoigne, for if the Lord ſhould not haue fealty of him hee ſhould haue no manner of ſeruice which ſhould bee inconuenient where he is Lord, and the tenements be holden of him.

THis caſe is worthy of great obſeruation for hereby it appeareth, that albeit the Alienors held not by fealty nor any other terrene ſeruice but only by ſpirituall ſeruices and tithe incertaine, yet the alienee ſhall hold by the certaine ſeruice of Fealty (and of this opinion is Littleton in our bookes agreeable with former Authorities) for the Law createth a new temporall ſeruice out of the Land to be done by the Alienee wherewith the Abbot was not formerly charged for the auoyding of an inconuenience, viz. that the Feoffee ſhould doe no manner of ſeruice, and conſequently the land ſhould bee holden of no man, wherein it is to bee remembred that (as hath been ſaid before) all the lands and tenements in England in the hands of any ſubiect are holden of ſome Lord or other, and that euery tenant muſt doe ſome kinde of ſeruice. And that all Lands and Tenements are holden either mediatly or immediatly of the King, for originally all lands and tenements were deriued from the Crowne. And it is to be obſerued that when the Law createth any new tenure, it is the loweſt, (viz. Tenure in Socage) and with the leaſt ſeruice that can be done, and neereſt to the freedome of the former ſeruice, as in this caſe a Tenure in Socage by Fealty only is created by the Law, which is the loweſt and leaſt ſeruice the Law can create, becauſe Fealty is incident to euery tenure except Tenure in Frankalmoigne, for if it ſhould Create any other ſeruice it muſt create Fealty alſo. And the Law according to equitie and Juſtice giueth this Fealtie to the Lord of whom the land was before holden in Frankalmoigne. And laſtly that the Law ſo abhorreth an inconuenience, as it Createth out of the Land a new ſeruice for auoyding thereof. It appeareth by our bookes that a Seigniory in Frankalmoigne may bee granted ouer, and conſequently the Tenant ſhall hold of the Grantee by Fealty only, and therefore Britton ſaid well, that no ſeruice could be demanded of a Tenant in Frankalmoigne tant come les terres remaine en les maynes les feoffees.

31.E.3. Ceſſant 22. 33.H.6.67. 21.E.4.11. lib.9.fo.123. Anth. Lower caſe.

Lib.9.fo.123. in Anth. Lower caſe.

42.Aſſ. Pl.6.

Britton 164 b.

Sect. 140.

CItem ſi home graunta a cel iour a vn Abbe, ou a vn Priour terres ou tenements en frankalmoigne, ceux priour (frãkalmoigne) ſont

ALſo if a man grant at this day to an Abbot or to a Prior, lands or tenements in Frankalmoigne, theſe words (frãkalmoigne, are voide, for it is or-

COrdeine per leſtatute. Here it appeareth by the authoritie of Littleton, that this is a Statute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum regni ſui conceſſit prouidit & ſtatuit.

But

Vide lib.8. the Princes case.

But because it is Dominus Rex in Parliamento, &c. conceſſit, it is as much in this caſe being an ancient ſtatute as Dominus Rex authoritate Parliamenti conceſſit. Secondly, It is amongſt other acts of Parliament entred into the Parliament Roll, and therefore ſhall bee intended to bee ordained by the King, by the conſent of the Lords and Commons in that Parliament aſſembled. Thirdly, It is a generall Law whereof the Iudges may take knowledge, and therefore it is to bee determined by them whether it bee a ſtatute or no. Now for the diuers formes of Acts of Parliament, you may reade them in the Princes Caſe vbi ſupra.

¶ *Quia emptores terrarum.* This ſtatute is called ſo, because the ſtatute beginneth with theſe words, Quia emptores terrarum.

¶ *Nul poet aliener, &c. terres in fee ſimple de tener de luy meſme.*

This is iuſtly inferred vpon the Statute, but the letter of the Statute is that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authoritie of Littleton, he that citeth a Statute is not bound to recite the very words thereof ſo long as he miſſeth not of the ſubſtance and neceſſary conſequence thereupon, and yet the ſafer way is to touch the words of a Law as they be.

13.E.3.tit.releaſe 33. 27.H.8.F.N.B.211.I.

¶ *Granta per licence meſme les tenements, &c.* Here Littleton ſpeaketh of a licence or a diſpenſation within the ſaid Statute of Quia emptores terrarum (and mentioneth no other Statute) which may bee done by the King and all the Lords immediate and mediate, for it is a rule in Law, Alienatio licet prohibeatur, conſenſu tamen omnium, in

boides, pur ceo que il eſt ordeine per leſtatute que eſt appelle; Quia emptores terrarum **(que leſtatut fuit fait,** Anno 18. Ed. 1.) **que nul poit aliener ne graunter terres ou tenements en fee ſimple, a tener de luy meſme. Iſſint ſi hõe ſeiſie de certaine tenements quẽx il tiẽt de ſon Seignior per ſeruice de chiualer, & a cel iour il &c. granta per licẽce meſmes les tenements a vn Abbe, &c. en Frankalmoigne, Labbe tiendra immediatment meſmes les tenemẽts per ſeruice de chiualer de meſme le ſeignior, de q̃ ſon grauntor tenoit, & ne tiendra my de ſon grank en frankalmoigne, p cauſe de meſme leſtatuť, iſſint que nul poit tener en frankalmoigne, ſi non q̃ ſoit per title de preſcription, ou per force de graunt fait a aſcun ď ſes predeceſſors, deuant q̃ meſme le ſtatute fuit fait. Mes le roy poit doner terres ou tenements en fee ſimple, a tener en Frankalmoigne, ou per auters ſeruices, car il eſt hors de cas del eſtatute.**

dained by the Statute which is called, *Quia emptores terrarũ* which was made *Anno* 18.E. 1.) that none may alien nor grant Lands or Tenements in Fee ſimple to hold of himſelfe. So that if a man ſeiſed of certaine tenements which hee holdeth of his Lord by Knights Seruice, & at this day he &c. grãteth by licence the ſame tenements to an Abbot, &c. in Frankalmoigne, the Abbot ſhall hold immediately the Tenements by Knights ſeruice of the ſame Lord of whom his grantor held, and ſhall not hold of his grantor in Frankalmoigne, by reaſon of the ſame Statute. So that none can hold in Frankalmoigne, vnleſſe it bee by title of preſcription, or by force of a grant made to any of his Predeceſſours before the ſame ſtatute was made: but the King may giue Lands or Tenements in Fee ſimple to hold in Frankalmoigne, or by other ſeruices, for he is out of the caſe of that Statute.

quorum fauorem prohibita est, potest fieri, and quilibet potest renunciare iuri pro se introducto: and the licence of Lords immediate, and mediate in this case shall enure to two intents, viz. to a dispensation both of the statute of Quia emptores terrarum, and of the Statutes of Mortmaine, as Littleton here implyeth, because their deeds shall be taken most strongly against themselues. But it is a safe and good policie in the Kings licence to haue a non obstante also of the Statutes of Mortmaine, and not only a non obstante of the Statute of Quia emptores terrarum. But it appeareth by Littleton (which is a secret of Law) that there needeth not any non obstante by the King of the Statutes of Mortmaine, for the King shall not be intended to be misconusant of the Law, and when he licenceth expressely to alien to an Abbot, &c. which is in Mortmaine, he needs not make any non obstante of the Statutes of Mortmaine, for it is apparant to be granted in Mortmaine, and the King is the head of the Law, and therefore Præsumitur Rex habere omnia iura in scrinio pectoris sui, For the maintenance of his grant to be good according to the Law, for which cause of purpose Littleton maketh no mention of any licence in Mortmaine. Dispensatio est mali prohibiti prouida relaxatio vtilitate seu necessitate pensata.

43. Ass. Pl. 19. 9 E. 4. b. 11. Pl. Com. 502. 503. Grendons case. Vid. lib. 10. 25. 26. 31. & 110 Vide S. fol. 686.

¶ *Labbe tiendra, &c. per seruice de chiualer.* For although by the death of the Abbot there is neither Ward, Mariage, nor relefe due, yet he holdeth by Knights Seruice, albeit the Lord cannot haue the fruit of it, and if he with the consent of the Couent alien, the land ouer to a man and his heires, there is the Ward, Mariage, and Relefe reuiued. But by prescription (as it hath beene said) the successor of an Abbot may pay relefe. An Abbot or Prior, &c. that holdeth Lands by Knights Seruice, albeit hee ought not in respect of his profession to serue in warre in proper person, yet must he find a sufficient man conueniently arrayed for the warre to supply his place. And if he can find none, then must he pay Escuage, &c. for his profession doth not priuiledge him, but that the Kings seruice in his warre must be done that belongeth to his tenure.

Litt. fol. 20. a. 8. R. 2. relefe 14. 3. H. 4. 2. a. Vide Littl. fol. 20.

Nota (Reader) since Littleton wrote a man might either in his life time, or by his last will in writting, (m) giue Lands, Tenements, &c. to any spirituall bodie Politicke or Corporate, to be holden of himselfe in Frankalmoigne, or by Diuine Seruice, as by the statute of 1. & 2. Phil. & Mariæ (which indured for twenty yeares) appeareth, which statute since that time hath beene fauourably and benignely expounded.

(m) 1. & 2. Ph. & Ma. ca. 8 Mich. 8 & 9. Eliz. Dier. fol. 255.

¶ *Issint que nul poet tener en Frankalmoigne si non que sont per title de prescription, &c.* It is to be vnderstood, that a man seised of lands may at this day giue the same to a Bishop, Parson, &c. and their successors in Frankalmoigne, by the consent of the King and the Lords mediate and immediate of whom the Land is holden, for the rule is Quilibet potest renunciare iuri pro se introducto.

12. E. 4. 4. 27. H. 8. 2. E. 2. auowrie 185.

So if an Ecclesiasticall Parson hold lands by fealtie and certaine Rent, the Lord at this day may confirme (n) his estate, to hold to him and to his successors in Frankalmoigne, for the former Seruices bee extinct, and nothing is reserued but that he holds of him, and so hee did before.

(n) 4. E. 3. 21. 22. E. 3. 15. 38 H. 6. 25. Lits. cap confir. mat. 123.

¶ *Mes le roy poet, &c. car il est hors de case del statute.*

It is cleere that the King is out of the case of the Stature, for the Statute is Quod feoffatus teneat terram illam, &c. de capitali Domino feodi, &c. and this cannot bee intended of the King, who is superior to all and inferiour to none, but where the King is bound by Acts of Parliament, and where not, Vide lib. 11. fol. 66. Magdalen Colledge Case.

Lib. 11. fol. 66. Magdalen Colledge Case.

Section 141.

¶ ET nota q̃ nul poit tener terres ou tenements en frankalmoigne, forsprise del grantor, ou de ses heires. Et pur ceo il est dit, que si soit Seignior, mesne & tenant, & le tenant est vn Abbe que tient

AND note that none may hold lands or tenements in frankalmoigne, but of the Grauntour, or of his heires. And therefore it is said, that if there be Lord, Mesne, and Tenant, and the tenant is an Abbot which

¶ *Forsprise del grantor ou de ses heires.* The tenure in Frankalmoigne is an incident to the inheritable bloud of the grantor, and cannot be transferred nor forfeited to any other, no more then a Foundership of a house of Religion, which is intended to bee in Frankalmoigne, or homage ancestrell, or the writt of Contra formam feoffamenti, or the writt of

14. E. 3. tit. Mesne 7. 14. H. 3. tit. diseigmer B. 33. 15. E. 3. confirm. 8. 27. H. 8. b. Temps E. 1. garr. 90 45. E. 3. 23. 47. H. 3. garr. 59. 11. H. 4. 50 14. H. 4. 5. 10. H. 7. 11. 28. Ass. 33. 18. E. 3. 18. 22. E. 3. 18. Corody broke. 5. 22. H. 6. 50. 4 E. 2. auowry 201. 202. 19. E. 3. tenden 122. 11. E. 3. ibid. 100. 30. H. 6. 7. 33. H. 8. Dier 51. F. N. B. 16. F. N. B. 211. c.

Contra

15.E.3 confirm.8.

Contra formam collationis, or any other incident to their inheritable bloud. But it is no incident inseperable for the Lord may release to the Tenant in Frankalmoigne, and then the tenure is extinct, and he shall hold of the Lord Paramont by fealtie, as in the case of Littleton, Sect.139.

¶ *Ou de ses heires.* Here (or) hath the sence of (and.) for a man cannot at this day grant lands in taile and reserue a Rent to his heires, and exclude the grantor himselfe, for the heire cannot take any thing in the life of the Ancestor, neyther can the heire take any thing by

de son mesne en frãk-almoigne, si le mesne deuy sans heire, donque le mesnaltie deuiendra per escheate al dit Seignior Paramont, & Labbe adonque tient de luy immediate per fealtie tantum, & ferra a luy fealtie, pur ceo que il ne puit tener de luy en Frankalmoigne, &c.

holdeth of his Mesne in frankalmoigne, if the Mesne die without heire, the Mesnaltie shall come by Escheat, to the said Lord Paramont, and the Abbot shall then hold immediatly of him by fealtie only, & shall do to him fealtie, because hee cannot hold of him in frankalmoigne, &c.

Vide 15.E.4.

descent when the Ancestor himselfe is secluded. But if a man had granted Lands at the Common Law to hold of his heires, these words (to hold of his heires) are void, and he shall hold of the grantor as he held ouer, which he should haue done, if hee had made no reseruation at all.

33.E.3.tit. Annuitie 52. 3.Ass.Pl.8. &c.

And albeit Littleton sayth that no man can hold lands in Frankalmoigne, but of the grantor or his heires, yet might an Abbot by assent of his Conuent, or a Bishop with assent of his Chapter, and such like by licence as is aforesaid, haue giuen lands in Frankalmoigne, to hold of them and their Successors, and as Littleton himselfe agreeth; the King may giue Land in Frankalmoigne. In which case the land shall be holden of him his heires and successors.

¶ *Et pur ceo est dit si soit Seignior, mesne & tenant, & le tenant est vn Abbe, &c.* By this it appeareth that if the Seigniory be transferred by act in Law to a stranger, and thereby the priuitie is altered, that the tenure in Frankalmoigne is changed to a tenure in Socage by fealtie, aswell as it appeareth before when the Seigniory or Tenancy is granted to another, and the Law in this case also createth a new fealty wherewith the Land was not charged before.

2.E.4.46. 7.E.4.12.4.

¶ *Donques le mesnaltie deuiendra per escheat al dit Seignior Paramont.* This new tenure created by Law shall vpon the Escheat drowne the Seigniorie, for alwayes the Seigniory nearer to the land drownes the Seigniory, that is more remote of, and yet the Lord in this case to whom the Mesualty is escheated, shall hold by the same services that he held before the Escheat.

Sect. 142.

¶ *Home de Religion.* And yet this case extendeth to all Ecclesiasticall persons that hold in Frankalmoigne, be they secular or regular, for the mesne ought to acquite all of them, for they be bound (a) to make prayers for their founder or his heires, and in consideration of those prayers, the founder, &c. is bound to pay to the chiefe Lord all Rents and seruices issuing out of that Land, as it appeareth by that which followeth.

(a) Tr. Com 306.b. in Shermptons case. 33.H.6.6. 39.H.6.29. 14.E.3.mesne 7.

¶ *De luy acquiter.*

¶ Et nota q̃ lou tiel hõe de religion tient ses tenements de son Sñr ẽ frankalmoigne son Sñr est tenus p la ley de luy acquiter de chescun mãer d̃ seruice, que ascun Sñr paramount de luy boet auer ou demander de mesmes les tenements, et sil ne

And note that where such man of religion holds his tenements of his Lord in frankalmoigne, his Lord is bound by the law to acquite him of euery manner of seruice which any Lord paramont will haue or demand of him for the same tenements, and if he doth not acquite luy

luy aquita pas, mes ſuffra luy deſtre diſtraine, &c. donq̃ il auera enuers ſon ſeignior vn briefe de Meſne, & recouera enuers luy ſes dammages & ſes coſtes de ſon ſuit, &c.

him, but ſuffereth him to bee diſtreyned, &c. hee ſhall haue againſt his Lord a Writ of Meſne, and ſhall recouer againſt him his damages and coſts of ſuit, &c.

Acquiter is compounded of ad, and the old verbe, quietare, and ſignifieth in Law (b) to diſcharge, or keepe in quiet, and to ſee that the tenant be ſafely kept from any entries or other moleſtation for any manner of ſeruice iſſuing out of the land to any Lord that is aboue the Meſne. (c) And hereof commeth (d) acquitall, and quietuseſt, (that is) that hee is diſcharged; and he that is diſcharged of a felony, &c. by iudgement, is ſaid to be acquited of the felony, acquietatus de felonia; and if he be drawne in queſtion againe, he may plead (e) autrefoits aquite. And therefore if ſuch a Tenant, as Littleton here ſpeaketh of, be diſtrained by any Lord paramount, the Meſne (to keepe the Tenant quiet) may put his beaſts in the pownde, in ſtead of the beaſts of the Tenant.

(b) *Fleta lib.*2.*ca.*43. *Britton fo.*58.59. *Vid. hereafter in this Sect. in breife de Meſne.*

(c) *Vid. Sect.*142.540.
(d) 8 *E.*2. *Corone*, 424. 20.*E.*2 *Ibid.*232. *Stanf. Pl. Corone*, 105.
(e) 4.*E.*3.35. 17.*E.*3.44. 7.*H.*4.18. 34.*H.*6.47. 13.*E.*4.6. *F.N.B.*136. *Lib.*9.*fo.*110.111. *in Treſhams caſe.*

There be three kinde of Acquitalls. 1. An acquittall by Deede. 2. An acquitall by Preſcription. 3. An aquitall by Tenure: And by Tenure foure manner of wayes. 1. By oweltie of ſeruices, for ſeruice acquites ſeruice. 2 Tenure in Frankalmoigne, whereof Littleton here ſpeaketh. 3. Tenure in Frankmarriage. 4. Tenure by reaſon of Dower.

3.*E.*3.14.77. 5.*E.*3.11. 4.*H.*6.28. 39.*E.*3.19. 11.*H.*4.52. 12.*H.*4.9. 14.*H.*4.17. *F.N.B.* 136.*b.b.* 39.*H.*6.30. 33 *H.*6.7. *F.N.B.*135.*m.*

¶ *De cheſcun manner de ſeruice.* (f) And yet not of ſeruices only as Homage, Fealty, Rent workes and other ſeruices, but alſo of improvement of ſeruices, as if he be diſtreyned for reliefe, * Aide pur file marier, aide pur faire fitz chivaler, &c. Alſo for Suite ſeruice to a hundred, (g) but for ſuite reall in reſpect of reſiance within any Hundred, Leete or Turne the Meſne ſhall make no acquitall, for that is in reſpect of his perſon and reſiancie.

4.*E.*4.35. 12.*H.*4.9. 28.*E.*3 95 17.*E.*3.39. (f) 39.*H.*6.31.*a.* 9.*E.*4 27. *F.N.B.*136.*m.* 17.*E.*2. *Meſne.* 5.*E.*3.49. * *Bracton lib.*2.*fol.*84. (g) 4.*E.*3.42.

¶ *Breife de meſne.* Breue de medio, A writ of meſne, ſo called by reaſon of the words of the writ of Meſne, which are, Vnde idem A. qui medius eſt inter C. & præfatum B. A, which is meſne betweene C. that is the Lord paramount, and B. that is the tenant paravaile And note that there be 6. writs in Law that may be maintained quia timet, before any moleſtation, diſtreſſe, or impleading; as a man may haue his writ of Meſne (whereof Littleton here ſpeakes) before he be diſtreyned. 2. A Warrantia cartæ before he bee impleaded. 3. A Monſtrauerunt before any diſtreſſe or veration. 4. An Audita quærela before any Execution ſued. 5. A Curia claudenda before any default of incloſure. 6. A Ne iniuſtè vexes before any Diſtreſſe or moleſtation, and theſe be called Breuia anticipantia, writs of prevention.

*For this Writ ſee the Regiſter fol. and F.N.B. fol.*135. *Mirror ca.*2 §.13. *Bracton lib.*2 *fol.*84. *Britton fol.*58. *Fleta lib.*2. *ca.*43. *Weſtm.*2.*cap.*9.

¶ *Et recovera vers luy ſes damages.* It is to be knowne that there be two ſeverall iudgements in a writ of Meſne, one at the Common Law, another by the ſtatute of W.2 ca.9. At the Common Law he ſhall haue iudgement to recouer his acquitall and if he be diſtreyned or dammified his damages and coſts; And the proceſſe at the Common Law was Summons, Attachment and Diſtreſſe infinite in the ſame Countie where the writ is brought. * The iudgement by the ſaid ſtatute of W.2. is a forejudger of the Meſnaltie, and that in two ſeverall caſes, one vpon Proceſſe given by the ſaid ſtatute, viz. Summons, Attachemnt and Grand diſtreſſe, and if he commeth not, and the writ be returned he ſhall be forjuged: the other caſe is where the Tenant recovereth his acquitall in a writ of Meſne, if hee be not acquited afterwards, he ſhall haue a writ of Diſtringas Ad acquietandum againſt the ſame Meſne, and if he commeth not, he ſhall be forjudged by his default of the meſnaltie, and ſo if he commeth, and it be found againſt him by Verdict he ſhall be forjudged: but Forjudger in that caſe is not given againſt his heire for that the ſtatute ſpeaketh only of the meſne and not of his heires. And the iudgement in caſe of forjudgement is, quod T, (le Meſne) Amittat ſervitia de A. (le tenant) de tenementis prædictis, & quod omiſſo prædicto T. prefat' R. (le ſeignior paramount) modo ſit attendens & reſpondens pereadem ſervitia per quæ T. tenuit. The ſaid ſtatute in caſe of forjudgement doth not binde a Feme couert, and yet if ſuch a iudgement be given againſt a Baron and feme it is not voyde but erronious, and to be reverſed in a writ of error, and ſo a forjudgement againſt a Tenant in tatle ſhall binde the iſſue in tatle in an Auowrie vntill he reverſeth it by error. If two joyntenants bring a writ of Meſne, and the one is ſummoned, and ſevered, the other cannot forjudge the Meſne, for he ought to be attendant to the Lord paramount, as the meſne was, and that cannot he be alone. And ſo it is if there be two joyntenants Meſnes, and in a writ of Meſne brought againſt them, one maketh default, and the other appeares, there can be no forjudger.

*W.*2.*ca.*9. *Vid. lib.*8.*fol.*134. *Mary Shapleys caſe.*

* *Bracton, lib.*2.*fol.*84. *Fleta lib.*2.*cap.*43.

46.*E.*3.31. 18.*E.*2. *tit Meſne.* *F.N.B.*136. 2.*H.*4 7. 17.*E.*3. *Contra formã Collat.*1. *F.N.B.*121.

7.*E.*3. 41. *tit. Meſne* 18. 9.*E.*2. *ibid.*67. 14.*E.*2. *ibid.*70. *Lib.*9.*fol.*73.*b.* *Doct. Huſeys caſe.*

If

If the Tenant be disseised, and the Disseisor in a writ of Meine forjudge the meane, this shall not bind the Disseisee. And so if the Meine be disseised, and a forjudgement is had against the Disseisor, this doth not bind the Disseisee, for the words of the said Statute are, Quando tenens sine præiudicio alterius quam medio attornare se potest capitali Domino.

But if the daughter, the sonne being in venter sa mere, be forjudged, it shall bind the son that is borne afterwards, because he had no right at the time of the forjudgement. And so if the tenant enter in Religion, and his heire forjudgeth the Meine, and then the Auncestor is disraigned, he shall be bound causa qua supra. If there be Lord, Prior, Meine and Tenant, the Meine cannot be forjudged, because he alone can doe nothing to the preiudice to the disherison of his Church: And the like Law is of a Bishop, Parson, and the like.

19.E.3.Iudgm.117.

W.2.ca.9.

No forjudgment can be but when there is but one meane betweene the Lord distreyning and the Tenant, because the Tenant upon the forjudgement cannot bee attendant to the Lord distreyning, in respect there is a meane betweene them, and so the said Statute provideth for in expresse termes.

Nota, the Plaintife in the writ of Meine may chuse either Proceste at the Common Law, or upon the said statute of W.2. Fore-Judgement is called Forisjudicatio, and hee that is forjudged, Forisjudicatus. And Bracton hath this writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat custodiam hæredis quia in Curia nostra forisjudicatur de custodia, &c. Fleta calleth it, Abiudicationem, and thereupon commeth abiudicatus; for he saith, Post Proclamationem, &c. factam abiudicetur medius de feodo & seruitio suo.

50.E.3.23.F.N.B.137. Bract.li.4.256.b. Brit.f.58.b. Flet.li.2.ca.43.

Chap.7. Homage Auncestrel. Sect.143.

¶ *Per title de Prescription en le Tenancie en le sanke le tenant, & auxy en le Seignior en le sanke le Seignior.* Here Littleton doth not define what Homage auncestrell is, but putteth an example in one case. For in the 146. Section it appeareth, that bloud is not alwayes necessarie on the Lords side. In this example here put, there must be a double prescription both in the bloud of the Lord and of the Tenant, and therefore I thinke there is little or no land at all at this day holden by Homage auncestrel.

9.H.3.Vouch.277.47 H.3. Gart.99.Temps E.1.Gar.90. 4.E.2.Vouch.245.45.E.3.43 11.H.4.52. 4.H.6.25.

And hereof it is said, Autant est le Seigniortenus a son homage, come le homage a son Seignior forsque solement en reuerence. And herewith agreeth Bracton, Est tanta & talis connexio per homagium inter Dominum & tenentem, quod tantum debet Dominus tenenti quantum tenens Domino præter solam reuerentiam.

Brit.fo.170.a.

Bract.fo.78. Glam.li.9.ca.4,5,6.

¶ *Treit a luy garranty.*

Tenure p homage ancestrel est, lou vn Tenant tient sa Terre de son Seignior per homage, & meisme le Tenant & ses Auncestors que heire il est ont tenus meisme le Terre del dit Seignior, & de ses auncestors que heire le Seigniour est, de temps dont memorie ne court per homage, & ont fait a eux homage. Et ceo est appel Homage auncestrel, per cause de continuance que ad este per title de Prescription en le Tenancie en le sanke le Tenaunt, & auxy en le Seigniorie

Tenant by homage Auncestrel is, where a tenant holdeth his land of his lord by homage, and the same Tenaunt and his Auncestours whose heire hee is, haue holden the same land of the same lord, and of his Auncestors whose heire the Lord is, time out of memorie of man, by Homage, and haue done to them Homage. And this is called Homage Auncestrell, by reason of the continuance which hath beene by title of Prescription in the Tenancie in the bloud of the Tenant, and also in the Seigniorie in

rie en le sanke le Seignior. Et tiel Seruice de Homage Ancestrell trait a luy garrantie, cestascauoir, que le Seignior que est en vie ad receiue le homage de tiel Tenant, doit garranter son Tenant quant il est impliede de la terre tenus de luy per Homage Ancestrel.

the bloud of the lord. And such seruice of Homage Auncestrell draweth to it, warrantie, that is to say, that the Lord which is liuing, and hath receiued the Homage of such Tenant ought to warrant his Tenant when he is impleaded of the land holden of him by Homage Auncestrell.

Hereby appeareth what a reuerend respect the Law hath to ancient Inheritances continued in the bloud of the Lord, and of the Tenant, for in this example put, if the continuance hath not beene in the bloud of both sides, no warrantie belongeth to Homage Ancestrell, but if ancient continuance hath beene on both sides, (m) then such Homage Ancestrell draweth to it warrantie, so as ancient continued Inheritance on both parties hath more prinisdge and account in Law, then Inheritances lately or within memory acquired.

Vide Britton vbi supra. 14.H.6.25. 18.H.6.2.b. *Glanuil lib.9 cap.4.5.& 5.* 9.H.3.Voucher 277. 47 H.3.Voucher 270.271. 43.E.3.3.a.

See the second part of the Institutes upon the 6.chapter of the statute of Bigamis.

If the Lord grant the seruices of his Tenant by Homage Ancestrel, the Tenant shall not be compelled in a per quæ seruitia to attorne, vnlesse the Counsel will grant in Court to warrant the Land vnto him. 18.H.6.2.b. *per Newton.*

If the Tenant vouch by force of this warrantie in Law, it is a good counterplea, that the Tenant (or any one of his Ancestors) recessit de seruitio suo & fecit seruitium suum: A. B. sine aliqua coactione propria voluntate. 9.H.3. voucher 277.

¶ *Et ad receiue homage de tiel tenant.* (a) So as before homage receiued, the Tenant could not absolutely bind the Lord to warrantie, and therefore of ancient time there lay (b) a writ De homagio capiendo, for the Tenant against the Lord to compell him to receiue his homage for the benefit of his warrantie. which writ you shall readein Bracton and (c) Britton and the Processe and manner of triall thereupon, and the same you shall find in 47.H.3.

(a) 9.H.3.Voucher 277. *Temp.*1.*Gar.*90. 45.E.3.23.
(b) *Glanuil lib.9.cap.4.5. et lib.1.cap.3. Bracton lib.2.fol.83.*
(c) *Britton fol.172.173. 47.H.3.garrantie 99.*

Sect. 144.

¶ Et auxy tiel seruice per homage auncestrel trait a luy acquital. s. que le Sñr doit acquiter le Tenant enuers touts autres Sñrs paramont luy de chescun manner de seruice.

AND also such seruice by homage ancestrell draweth to it acquitall, s. that the Lord ought to acquite the Tenant against all other Lords paramont him of euery manner of seruice.

¶ *Treit a luy acquitall.* Of acquitall somewhat hath beene said in the Chapter of Frankalmoigne. *Sect.*142.& 540.

Section 145.

¶ Et il est dit, q̃ si tiel tenant soit empled̃ p vn Præcipe quod reddat, &c. & il vouche a garrantie son seignior, q̃ vient eins p̃ proces, & demanda del tenãt que il ad de luy lier a

AND it is said that if such tenant be impleaded by a *Præcipe quod reddat, &c.* and vouche to warranty his Lord who commeth in by processe & demands of the tenant what he hath to binde

¶ *VN Præcipe quod reddat.* This is vnderstood of the Kings writ directed to the Sheriffe of the County where the land lyeth, whereby the Sheriffe is authorized to command the Tenant of the land to yeild the same to the Demandant, and of these words of the writ (Præcipe quod reddat) the writ is so called, writs of

Regist.159.

of Præcipe be of foure kindes, Præcipe quod reddat, Præcipe quod faciat, Præcipe quod permittat, & Præcipe quod non permittat, &c. as appeareth by the Register.

¶ *Et il vouche a garrantie.* A voucher, in Latyn Vocatio, or aduocatio is a word of art made of the Verbe Voco, and is in (d) the vnderstanding of the Common Law, when the Tenant calleth another into the Court that is bound to him to warrantie, that is, either to defend the right against the Demandant; or to yeeld him other land, &c. in value, and extendeth to lands or tenements of an estate of freehold or inheritance, and not to any chattel reall, personall, or mixt, saving only in case of a Wardship granted with warrantie (as shalbe said more at large in the chapter of Warranties) for in the other cases concerning chattels, the partie, if hee hath a warrantie, shall not vouche, but haue his action of Couenant, if he hath a Deed, or if it bee by parol, then an action vpon his case, or an action of Deceipt, as the case shall require. Now seeing that one Latyn, French or English word can haue this particular signification, therefore the common Lawyer (that I may speake once for all) is driuen, as the professors of other liberall sciences vse to doe, to vse significant words framed by art which are called vocabula artis, though they be not proper to any language. Hee that

(d) Mir. ca. 5. §. 1. & 5. Bract. li. 5. fo. 380, 381. Brit. ca. 75 de Gar. Vouch. Flet. li. 6. c. 23, 24, 25, 26. & c. optime. Lamb. Explic. Verb. Aduowre.

garranty, & il me coment il & ses aunceſters q̄ heire il eſt, ount tenus ſa terre del vouchee & de ſes aunceſters, de temps dont memorie ne curt. Et ſi le ſeignior que eſt vouche ne auoit reſceiue pas homage del tenant ne daſcun de ſes aunceſters, le ſeignior (ſil voit) poit diſclaimer en le ſeigniorie & iſſint ouſte le tenant de ſon garrantie. Mes ſi le Sñr q̄ eſt vouch ad receiue homage de le Tenant, ou de aſcun de ſes aunceſters, donques il ne diſclaimera, mes il eſt oblige p̄ la ley de garranter le tenant, & donq̄ ſi le tenant perd̄ ſa tre en default del vouchee il recouera en value enuers le vouchee de terres & tenements que le vouchee auoit al temps de le voucher, ou vnques puis.

him to warranty, and hee sheweth how hee & his ancestors whose heire hee is, haue holden their land of the Vouchee and of his ancestors time out of minde of man. And if the Lord which is vouched hath not receiued homage of the tenant, nor of any of his ancestors, the Lord (if hee will) may disclaime in the seigniory, and so ouste the tenant of his warranty, but if the Lord who is vouched hath receiued homage of the tenant, or of any of his ancestors, then he shall not disclaime, but hee is bound by the Law to warrant the tenant, and then if the tenant loseth his land in default of the Vouchee, he shall recouer in value against the vouchee of the lands and tenements which the vouchee had at the time of the voucher, or any time after.

(e) V. Reg. Iud. for all these Iudiciall writs.

(f) V. Vet. N. B. 179. 186. 39. E. 3. 28. 14. H. 6. 7. 17. E. 3. 41. 3. H. 4. 4. 11. H. 4. 72. 45. E. 3. 19. F. N. B. 134, 135.

voucheth is called the Voucher vocans, and he that is vouched is called Vouchee Warrantus. (c) The proces whereby the Vouchee is called, is a sommonea sad warrantizandum, whereupon if the Sheriffe returneth that the Vouchee is summoned, and hee make default, then a (f) Magnum cape ad valentiam is awarded, when if he make default againe, then iudgement is giuen against the Tenant, and he ouer to haue in value against the Vouchee, If the Vouchee doe appeare and after make default, then Parvum cape ad valentiam is awarded, and if he make default againe, then iudgement as before. But if the Sheriffe returne, that the Vouchee hath nothing, then after writs of Alias and plures, a writ of sequatur sub suo periculo shall be awarded, and if the like returne be made, then shall the Demandant haue iudgement against the Tenant, but he shall not haue iudgement to recouer in value, because the Vouchee was neuer warned. And it appeareth that he hath nothing: but in the grand Cape ad valentiam, it appeareth, that he hath assetts, and his making default after summons is an implied confession of the warranty. And it is called a sequatur sub suo periculo, because the Tenant shall lose his land

land without any recõpence in value, vnlesse he vpon that writ can bring in the vouchee to warrant the land vnto him: and if at the Sequatur sub suo periculo, the tenant and the Vouchee make default, and the Demandant hath iudgement against the Tenant, and after brings a Scire fac: to haue execution, the Tenant may haue a Warrantia Cartæ, and if he were impleaded by a stranger, he may vouche againe, but if hee had iudgement to recouer in value, he shall neuer haue a Warrantia cartæ, or vouche againe, for by this iudgement to recouer in value, he hath benefit of the warrantie. And you shall finde in bookes a recouery with a single Voucher, and that is when there is but one Voucher; and with a double Voucher, and that is when the Vouchee voucheth ouer, and so a treble Voucher, &c. Againe, you shall finde there also a forreine Voucher, and that is when the Tenant being impleaded within a particular iurisdiction (as in London or the like) voucheth one to warranty and prayes that he may be summoned in some other county out of the iurisdiction of that Court: this is called a forreine Voucher, but might more aptly be called a voucher of a forreiner de forinsecis vocatis ad Warrantizandum. Note. that by the Ciuill Law euery man is bound to warrant the thing that he selleth or conueyeth, albeit there be no expresse Warranty, but the Common Law bindeth him not, vnlesse there be a warrantie, either in Deede or in Law for Caueat emptor, as shalbe said more at large in the chapter of Warrantie in the third booke.

Glanc.ca.13. F.N.B.6.c.

¶ *Le Seignior (sil voet) poet disclaymer* (u) *en le Seigniorie. Disclaimer, disclamare,* **is compounded of** de **and** clamo, **and signifieth vtterly to** renounce the Seigniorie.

Brit.174.

(a) Note there be diuers kinds of Disclaymer, that is to say, a Disclaymer in the tenantes; a Disclaymer in the bloud; and a Disclaymer in the Seigniory, whereof Littleton here putteth his case.

(a) 47.H.3.Disclaim.35. 16.H.7.1.20.E.2. tit Nuper ob.14.F.N.B.197.& 151.b. 45.E.3.19.21.E.3.50.E.3. 23.&c.

(b) But if the tenant in Frankalmoigne bring a Writt of Mesne against his Lord, the Lord cannot disclayme in the Seigniorie, because he cannot hold of any man in Frankalmoigne, but of his Donor and his heires And so note a diuersity betweene a Tenure in Frankalmoigne, whereby Diuine Seruice is maintained, and Homage Auncestrell which respecteth Temporall Seruice. But if the Lord will not disclayme in the Seigniory, in the case of Homage Auncestrell, then albeit he hath not receiued Homage, he shall warrant the land.

(b) 14.H.3.tit.Disclaim.b.33

¶ *Si le Seignior que est vouche ad receiue homage, &c. il ne disclaymera.*

Therefore it is good for the Tenant, to the intent to oust the Lord of his Disclaymer, in his voucher to alledge, that the Lord hath taken homage of him, and if he alledge it not, and the Lord offer to disclayme, the Tenant may counterplead the same by acceptance of Homage, and the reason that the Lord cannot disclayme in that case is, for that hee hath accepted his humble and reuerent acknowledgement to become his man of life and member and terrene honour, and to be faithfull and loyall to him for the Tenements which he holds of him, and against the acceptance hereof the Lord cannot disclayme.

47.H.3.Disclaim.35. V.Bract.l.4.252.b.16.H.7.1 Brit.173,174.

¶ *Que il auoit al temps del voucher.* **Hereby it appeareth, that the** Tenant shall not be driuen to recouer in value only those Lands which the Lord had from that Ancestor which created the Seigniory, for that were in manner impossible, for that the Seigniory must be created before time of memory, and the first Creation of the Seigniory did not create the warranty, but the continuance of both sides time out of minde created the warranty. And that is, the reason that a Writ of Annuity shall not (c) lye against the heire by prescription because it cannot be knowne, whether he hath any land by discent from the said Ancestor, that first granted the Annuity. And here is a point worthy of obseruation that in the case of Homage Auncestrell, (which is a spectall warranty in Law) by the Authority of Littleton, the lands generally that the Lord hath at the time of the Voucher shall be liable to execution in value, whether he hath them by discent or purchase. But in the case of an expresse Warrantie the heire shall be charged but only for such lands as he hath by discent from the same Ancestor, which created the Warrantie.

(c) 49.E.3.5.b.10.E.4.10.b 19.H.6.74.37.H.6.19. 5.H.7.F.N.B.152.

Note, what priuiledge this ancient warrantie (created by operation of Law) hath more then the expresse Warrantie. And so you may obserue, that in this case, firmior & potentior est operatio legis quam dispositio hominis.

¶ *Al temps de voucher ou vnques puis.* **This is euident and worthy** of diligent obseruation, viz that the lands of the Vouchee shall be lyable to the warranty, that the Vouchee hath at the time of the Voucher; for that the Voucher is in lieu of an action, and in a Warrantia cartæ, the land which the Defendant hath at the time of the writ brought, shall be lyable to the warranty.

28.E.1.Vouch.291. 9.Ed.2. War.Ca.20. 19. Fines 127. 29.E.3.3.18.E.3.1. 2.H.4. 10. 23.E.3 Recou.in valu.3. 16.E.3.Vouch.85.19.Edw.3. Vouch.24.22.E.3.Fitz.Nat. Bre.134.f.

Vpon a Iudgement in Debt, the Plaintife (d) shall not haue Execution, but only of that land, which the Defendant had at the time of the Iudgement, for that the Action was brought in respect of the person and not in respect of the land. But if an Action of Debt bee brought

2.H.4.14.42.E.3.1.42.af.17 9.E.2 tit.Execut.249.

against the heire, and be alieneth, hanging the writ, yet shall the Land which he had at the time of the originall Purchase be charged, for that the Action was brought against the heire in respect of the land. (e) If a man be Nonsuit, the land only which hee had at the time of the amerciament assessed shall be charged, and not that which hee had at the finding of the pledges. For the amerciament is not in respect of the land, but of his want of prosecution which was a default in his person. But the issues of a Juror shall be leuied vpon the Feoffee, albeit they were not lost before the feoffment, because he was returned and sworne in respect of the land. Note the diuersitie.

(e) 22. Ass pl. 32.

If a man giue lands in fee with warrantie, and bind certaine lands specially to warrantie, the person of the Feoffor is hereby bound, and not the Land, vnlesse he hath it at the time of the Voucher

32. E. 1. Voucher 292.

Sect. 146.

Vide Britton fol. 58. 110.

¶ *Son Seigniorie est extinct, & le tenant tiendra de Seignior prochein paramount, &c.* Here two things are to be obserued, First, that by this disclaymer in the Seigniory, the Seigniory is (f) extinct in the Land.

(f) 45. E. 3. 7. 22. E. 4. 35

Secondly, That after the Disclaymer the Tenant shall hold of the next Lord Paramount by the same services, as the meine so disclayming held before.

Vide Sect. 143.

¶ *Si vn Abbe ou prior soit vouch &c. vncore, &c. vncore il ne poet disclaimer, &c.* Here it appeareth of the Lords side, that continuance of bloud is not necessary, but yet there must bee priuity of succession time out of mind in one politique body for if that bodie, be once dissolued, though a new bee founded of the same name, and all the possessions be granted to them, yet the Homage Ancestrell is gone. But if a Prior and Couent bee translated Concurrentibus his quæ in iure requiruntur to an Abbot and Couent, or to Deane and Chapter, there the Homage Ancestrell remaines, for though the name bee changed, yet the body was neuer dissolued, but in effect it remayneth still. If the body Politique were founded within time of memory, there cannot be Homage Ancestrell, for that continuance faileth, and though Ancestor is euer properly applyed to a naturall body, yet it is called Homage Ancestrell when the tenure is of a body Politique, for that it is Ancestrell of the Tenants side: but on the other side an Abbot or Prior cannot hold by Homage Ancestrell, for as appeareth by Littletons examples, it must euer be Ancestrell of the Tenants side. And where Littleton putteth his case of an Abbot or Prior, the same Law is of a Bishop, Deane, Archdeacon, Prebend, Parson, Vicar, and the like. Another thing here to be obserued is, that an Abbot or Prior cannot disclayme &c. for regularly it is true, Quod meliorem conditionem Ecclesiæ suæ facere potest Prælatus, deteriorem nequaquam, and againe, Ecclesiæ suæ conditionem meliorem facere possunt

14. H. 6. 12. 2. H. 6. 9. 38. Ass. p. 22. 37. Ass. 6. Lib. 3. fol. 73. &c. Deane and Chapter de Norwich case.

¶ **Et est ascauoir, que en chescun cas ou le Seigniour poit disclaimer ẽ son seigniorie per la ley, & de ceo voit disclaim̃ en Court de Record, son seigniorie est extinct, & le tenant tiendra del Seignior procheine paramont le seignior que ilsint disclaime. Mes si vn Abbe ou Prior soit vouch per force de homage auncestrel, &c. comment que il ne vnque prist homage &c. vncore il ne poit disclamer en tiel cas, ne en nul auter cas, car ils ne poient anienter ou deuester chose de fee que ad este vestue en lour meason.**

And it is to bee vnderstood, that in euery case where the Lord may disclaime in his Seigniorie by the Law, and of this hee will disclaime in a Court of Record his Seigniorie is extinct, and the Tenant shall hold of the Lord next Paramount to the Lord which so disclaimeth. But if an Abbot or Prior bee vouched by force of Homage Ancestrell, &c. albeit that hee neuer tooke homage, &c. yet hee cannot disclaime in this case nor in any other case, for they cannot take away or deuest a thing in fee which hath beene vested in their house.

possunt sine consensu, deteriorem non possunt sine consensu. And therefore an Abbot, Prior, Bishop, Deane, Archdeacon, Prebend, Parson, Vicar, or any other sole Corporation that is seised in auter droit cannot disclayme, because as Littleton sayth, they alone cannot deuest any fee which is vested in their House or Church. For the wisdome of the Law would neuer trust one sole person with the disposition of the Inheritance of his House or Church. But an Abbot, and Prior had their Couent, the Bishop his Chapter, the Parson and Vicar their Patron and Ordinary, and the like of other sole Corporations, without whose assent they could passe away no Inheritance.

40.E.3.27. 5.E.4.1. 6.E.3.51.52. 10.E.4.2.a. 21.H.7.20.

¶ *Ils ne poient anienter ou deuester chose de fee, &c.* These generall words haue certaine exceptions for in a quo Warranto at the suite of the King against a Bishop, Abbot, or Prior for Franchises and Liberties, if the Bishop, Abbot, or Prior disclaime in them, this should bind their Successors. If an Abbot or Prior had knowledged the Action in a Writ of Annuity this should haue bound the Successour, because hee cannot falsifie it in an higher action, and there must be an end of Suites, Expedit Reipublicæ vt sit finis litium. But if the Abbot leuie a fine, or acknowledge the action in a Præcipe quod reddat, the Successor shall be bound pro tempore, but he may haue a Writ of Right, and recouer the Land.

6.E.3.51.52. 38.E.3.33. 16.E.3.tit. Abbot.13. 19.E.3.tit. Abbot.12. 7.R.2. Abbot.7. 12.H.4.11. 20.H.6. fo vltimo. 4.H.7.2. 2 H.4.6. 34. Ass.p.7. 14.E.4.tit. Abbot.B. 8.E.3.28. 12 H.8.7.

¶ *Per force de Homage Ancestrell, &c.* Here (&c.) implyeth or by any other Warranty (i) as by the reason which our Authour here yeldeth, appeareth.

¶ *Chose de fee.* (k) For if in an Action of Debt vpon an Obligation against an Abbot, the Abbot acknowledgeth the Action, and dieth, the Successor shall not auoyd Execution though the Obligation was made without the assent of the Couent, for he cannot falsifie the recouerie in an higher Action: Et res iudicata pro veritate accipitur, and this is but a Chattell. And so it is of a Statute or Recognisance, acknowledged by an Abbot or Prior.

(i) 12.H.8.7. (k) 7.R.2.tit. Abbot.7. *See the Bookes next aboue.*

Sect. 147.

¶ Item si home q̃ tient son terre p homage ancestrel, alien a vn auter en fee, le alienee ferra Homage a son seignior, mes il ne tient de son Seigniour per Homage Auncestrel, pur ceo q̃ le tenancie ne fuit continue en le sanke de les auncesters lalienee, ne lalienee nauera iamés garrantie d̃ la terre d̃ son sñr pur ceo que le continuance del tenancie en le tenant fra son sank per lalienation est discontinue. Et sic vide, que si le tenant que tient la terre per homage ancestrell de son Seig-

ALso if a Man which holds his land by Homage Ancestrell, alien to another in fee, the alienee shall doe homage to his Lord, but hee holdeth not of his Lord by homage ancestrell, because the Tenancie was not continued in the bloud of the Ancestors of the alienee, neither shal the alienee haue warrantie of the land of his Lord, because the continuance of the tenancie in the Tenant, and to his bloud by the alienation is discontinued. And so see, that if the tenant which holdeth his Land of his Lord

¶ *A Lien a vn auter en fee.* For hereby the priuity of the estate is altered and the continuance of it in the bloud of the Tenant is dissolued. But if the Tenant maketh a Lease for life, or a gift in taile, this is a continuance of the priuitie and estate in the Tenant in respect of the reuersion that remayneth in him: for the fee, whereof Littleton here speaketh was not out of him. But if the Tenant maketh a feoffment in fee vpon condition, and dieth his heire performeth the condition, and reentreth the homage ancestrell is destroyed in respect of the interruption of the continuance of the priuity and estate, and this case was put and not denied in the argument of (m) of the Case betweene the Lord Cromwell and Andrewes, Mich.14. & 15.Eliz. which I my selfe heard & obserued. As if Cesty & vse had made a feoffment in fee vpon condition and entred for the condition broken hee should haue detained the Land against

(m) 1.Mich.14 & 15.Eliz. 5.H.7.

gainst the Feoffees for euer, for that the estate and priuitie was for the time taken out of the Feoffees, and thereby dissolued for euer. But if the Land were recouered against the tenant vpon a faint title, and the Tenant recouer the same againe in an action of higher nature, there the Homage Auncestrell remaines, for the right was a sufficient meane for the continuance: so it is if he had reuersed it in a Writ of Error. (n) If the alienee be impleaded in Littletons case and vouche the alienor that held by Homage Auncestrell, albeit hee commeth in by fiction of Law to many purposes in priuitie of his former estate Yet to this purpose he cannot come in as Tenant by Homage Auncestrell, because of the discontinuance of the estate and priuitie, and as Littleton sayth, the Tenancie was not continued in the bloud. (o) and Britton saith, Et come aſcun nequedent ſoit Vouche per homage, & le Seigniour tende de auerrer que le tenement dount il vouche ſuit translate hors del ſanke del primer purchaſer per feoffment ou per aſcun auter translation: en tiel caſe ſoit le tenant charger de voucher ſon feoffor ou ſes heires.

(n) 5.E.3.11. per Cantrel.

(o) Britton.fol.170.a.

38.E.3.30. 11.H.4.22. 17.E.3.47.59.73.74. 26.E.3.56. 18.E.3.56. 16 E.3 Voucher.8. 18.E.3.30. 44.E.3. Litt.fol.169.

¶ *Coment que il repriſt eſtate del alienee en fee, &c.* For the cause aforesaid in respect of the interruption of the priuitie and continuance of the estate. And herewith agreeth our Bookes in Cases of warranties in Deed or warranties in Law. See more of this in the Chapter of Warranties.

Sect. 148.

¶ NE ferra homage al fitz: If A. holdeth of B. as of the Manor of Dale, whereof B. is seised in taile. B discontinueth the estate taile, and taketh backe an estate in Fee simple. A. doth homage to B. B. dieth seised, the issue in taile entreth, A. shall doe homage againe to the heire in taile of B. because hee is remitted to the estate taile, and the state in fee that his father had; in respect whereof the homage is done is vanished, and the heire in taile is in of a new estate, in respect whereof hee ought to doe a new homage. (p) But regularly it is true

(p) Britton.175.176.

¶ Item il eſt dit, que ſi home tient ſa terre d ſon ſeignior per homage & fealty, & il ad fait homage & fealty a ſon ſeignior, & le ſeignior ad iſſue fits & deuy, & le ſeigniory diſcendiſt a le fits, en ceo cas le Tenant que fiſt homage al pere ne ferra homage al fits, pur ceo que quant vn tenant ad fait vn foits homage a ſon Seignior il eſt excuſe pur terme de ſa vie de faire homage a aſcun auter heire del ſeignior, mes vncore il ferra Fealtie al fits & Heire le Seignior, coment que il fiſt Fealty a ſon Pere.

ALſo it is said that if a man holds his land of his Lord by Homage and Fealty, and hee hath done homage and fealtie to his Lord, and the Lord hath issue a sonne and dies, and the Seigniorie discendeth to the sonne, in this case the Tenant which did homage to the father shal not doe homage to the sonne, because that when a tenant hath once done homage to his Lord, hee is excused for terme of his life to doe homage to any other heire of the Lord, but yet he shal do fealty to the sonne and heire of the Lord, although he did fealty to his father.

which Littleton sayth, that when a Tenant hath done once homage to his Lord, he is excused for terme of his life to make homage to any other heires of the Lord. But he shall doe fealtie to his sonne, albeit he hath done fealtie to the father.

Sect.

Sect. 149.

¶ Item ſi le Sñr apres l homage a luy fait per ſon tenant grant le ſeruice de ſon tenant per le fait a vn auter en fee, & le tenant atturna, &c. donque le tenant ne ſerra my compel de faire homage, mes il ferra fealtie, comẽt que il fiſt fealtie deuant a le grauntor. Car fealtie eſt incident a chelcun atturnement del tenant, quant le ſeigniorie eſt graunt. Mes ſi aſcun home ſoit ſeiſie dun manor, & vn auter hõe tient de luy la terre come del manor auandit per homage, le quel tenant ad fait homage a ſon Sñr q̃ eſt ſeiſie del manor, ſi apres vn eſtrange port Præcipe quod reddat enuers le Sñr del manor & recouera le manor enuers luy, et ſuiſt execution, en ceſt caſe le tenant ferra auterfoits homage a celuy q̃ recouera le manor, coment q̃ il fiſt homage deuant, p̃ ceo que leſtat̃ celuy que receiuoit le primer homage, eſt defete per le recouerie, et ne girra en la bouche le tenant a fauxer ou defeater le recouerie que fuit enuers ſon Seignior. Et ſic vide diuerſitatem en

ALſo if the Lord after the homage done vnto him by the tenant, grant the ſeruice of his Tenant by Deed to another in fee, and the Tenant atturneth, &c. the Tenant ſhall not bee compelled to doe homage, but he ſhall doe fealty, although he did fealty before to the grantor. For fealty is incident to euery atturnement of the tenant, when the ſeigniorie is granted But if any man bee ſeiſed of a mannor, and another holds of him the land as of the Mannor aforeſaid by homage, which tenant hath done homage to his Lord who is ſeiſed of the Mannor, if afterwards a ſtranger bringeth a *Præcipe quod reddat* againſt the Lord of the Mannor, and recouereth the Mannor againſt him, and ſues execution, In this caſe the tenant ſhall againe do homage to him which recouered the mannor, although he had done homage before, becauſe the eſtate of him which receiued the firſt homage is defeated by the recouery, and it ſhall not lye in the power of the tenant to falſifie or defeate the recouerie which was againſt his lord. And ſo ſee a

¶ *Item ſi le Sñor, &c. grant le ſeruice de ſon tenant per fait, &c.* Brit.176.

Note a diuerſitie when the Lord alieneth the ſeigniorie, and when the tenant alieneth the tenancie, for when the Tenant hath done homage, & the ſeigniory is transferred to another either by the act of the partie as alienation, or by act in Law, as diſcent, yet the tenant ſhall not iterat homage, as he ſhall do fealty, but when the Tenant doth homage, and alieneth the tenancy, there is a new Tenant, which neuer did homage, and therefore he ought to doe homage to the Lord albeit his Alienor had done it before. And it is to be obſerued that none ſhall doe * homage but the Tenant of the land to the Lords of whom it is holden, and therefore if homage bee due to bee done by the Tenant, if the Tenant alieneth the land to another, the Alienor cannot be compelled to doe homage. 13.E.1.tit.Perquo Seruitia, 22. & 11.Ga.91. 8.E.4.27.b.

¶ *Attorne, &c.* Here by (&c) is to be vnderſtood that albeit hee pay his rẽt, perform his Anuall ſeruices and doe Fealtie which is a part of homage,

homage, yet homage he shall not doe.

¶ *Mes si ascun home soit seisi dun Manner, &c.* Here it appeareth, that the case of the recouerie of the Seigniorie differeth from the alienation of the Lord, which is his owne act, or the discent of the Seigniorie to the heire, which is an act in Law. And the reason of this diuersitie is, for that by the recouerie, the state of him that receiued the homage, is defeated, for it shall not lie in the mouth of the Tenant, to falsifie, or to frustrate or defeat the recouerie which was against his Lord of the Mannor or Seigniorie, for that the Tenant had nothing therein, and euery man by Law ought to meddle in such cases with that which belongeth vnto him, which is worthy of obseruation concerning falsifying of recouries.

ceo case lou home vient a le Seigniorie per recouerie, & lou il vient per discent ou per graunt al Seigniorie.

diuersitie in this case, where a man commeth to a Seigniorie by recouerie, and where he commeth to the same by discent or grant.

Vide Bell. 551. 33.E.3. auowrie 255. 37.H.6.33. 39.H6. 34. 7.H7.11. Doct. & Stud. fol.45. 28.H.8.Dier.41

Note that to falsifie, in legall vnderstanding is to proue false, that is, to auoyd, or as Littleton here saith, to defeat, in Latine, falsare, seu falsificare, (i.) falsum facere.

7.H.8.cap.4.

But since Littleton wrote, it is recited by Act of Parliament, That whereas diuers, &c. haue suffered recouries against them of diuers Mannors, &c. for the performance of their wils, for the suretie of their wiues ioyntures, &c. and the recoueroꝛs had no remedie to compell the Freeholders and Tenants, &c. to attorne vnto them, nor could by order of Law attaine to the rents, seruices, &c. that Act doth giue the recoueroꝛs power to distreyne and auow, whereupon many haue thought, that this doth impugne Littletons case of the Recouerie. But distinguendum est: Littleton intendeth his case either vpon a recouerie by title, (for here saith, that the state of the Tenant in the recouerie is defeated) or without any consent vpon pretence of title, which is all one, for the Tenant cannot falsifie, and the Lord should auow as one that came in of a former title. And Littleton hath good authoritie in Law to warrant (a) his opinion, and the Statute of 7 H.8. extendeth to common recouries had by consent and agreement, as appeareth by the Act it selfe, which then was, and yet is a common assurance and conueyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act, an use might be limitted. So as it is apparant, that such recoueroꝛs came in meerely vnder the state of the Lord, &c. and had no remedie (as the Statute saith) to compell the Freeholders and Tenants to atturne, and without atturnement, could neither distreyne nor auow; wherefore this Statute gaue recoueroꝛs remedie to distreyne, and a forme to auow and iustifie, which they had not before, as it appeareth by the Doctor and Student, who liued at that time: The bodie of the Act is, That such recouerors may distreyne and make auowrie, &c. as those persons against whom the sayd recouerie is, should haue done, &c, if the same recouerie had not been had, and haue like remedie, &c.

(a) 39.H.6.22. 37.H.6.38 35.H.6.22.

28.H.8.Dier.41.

If a man had made a lease for yeares to begin at Michaelmas, reseruing a rent, and before Michaelmas he had suffered a common recouerie, the recoueroꝛ should distreyne for that Rent, which the Lessor before the recouerie could not. But if the recouerie had not been had, then he might haue distreyned, and so it is within the Statute: but if a fine had been leuied of a Mannor, and before atturnement the Conusee had suffered a common recouerie, the recoueroꝛ should not distreyne, &c. because the Conusee against whom the recouerie was had, could not.

21.H.8.cap.15.

But this Act extended onely to Distreiles and Auowries for Rents, Seruices, and Customes, and gaue also a forme of a Quare impedit. But vpon this Statute it was holden, That the recoueroꝛ could not haue an Action of Debt against the Lessee for yeares, nor an Action of waste against Tenant for life or yeares, and therefore remedie was prouided in those cases, by the Statute of 21.H.8.

Section 150.

¶ *Vient a son seignior.* The tenant ought to seeke the Lord to doe him homage, if the Lord be within England, for this seruice is personall as well of the Lords side, as of the Tenants side, for Law requi-

Item si vn Tenant que doit per son Tenure fayt a son Seignior Homage, vient a son Seignior, & dit a luy

Also if a Tenant which ought by his Tenure to doe his Lord Homage, commeth to his Lord, and saith vnto him, Sir, I

luy, Sir, ieo doy a vous faire homage pur les Tenements que ieo teigne de vous, & ieo sue icy prist a vous faire homage pur meismes les Tenements, pur que ieo vous pry, que ore ceo voiles receiuer de moy.

ought to doe homage vnto you for the Tenements which I hold of you, and I am here readie to doe homage to you for the same Tenements, and therefore I pray you, that you would now receiue the same from mee.

reth order and decencie. And therefore Bracton saith, Et sciendum, Quod ille qui homagium suum facere debet, obtentu reuerentiæ quam debet Domino suo, adire debet Dominum suum vbicunque inuentus fuerit in Regno, vel alibi si possit comodè adiri, & non tenetur Dominus quærere suum tenentem, & sic debet homagium ei facere. And the same Law it is for Fealtie, and the diuersitie betweene these seruices, and the rent is because that these are personall, and the rent may be payd and receiued by other, and therefore a tender of the rent vpon the land is sufficient.

Bracton fol.80.a. And Britton fol.171. agreeth herewith.

Sect. 151.

CEt tiele Seigniour adonqs refusa de ceo receiuer, donque apres tiel refusal le Seigniour ne poet distreiner le Tenant pur le homage aderere, deuant que le Seignior requiroit le Tenant de faire a luy homage, & l'Tenant a ceo faire refusa.

AND if the Lord shall then refuse to receiue this, then after such refusall the Lord cannot distreyne the Tenant for the homage behind, before the Lord requireth the Tenant to doe homage vnto him, and the Tenant refuse to doe it.

¶ And the reason hereof is, for that when the Tenant hath done his endeauour and dutie to offer his corporall seruice, and the Lord refuseth the same, or doe not accept his seruice vpon his tender thereof, (which is a refusall in Law) then the Law in respect of the Lords fault, requireth, that before the Lord can distrein for it, that he doth require the tenant to doe that seruice, and if he either refuse to doe it, or doe it not when he is required, it is a refusall in Law.

Vid. Bracton fo.83. Britton 171.172. 21.E.3.24. 21.Ass.p.73. 20.E.3. Auowrie 223. 45.E.3.9. 7.E.4.4. 21.E.4.17. 20.H.6.31.

Sect. 152.

CItem home poit tener sa terre per homage aunceſtrel, et per Escuage, ou per auter seruice de Chiualer, auxibien sicome il poyt ten sa tr̃ per homag̃ anceſtrel en Socage.

ALso a man may hold his land by homage Aunceſtrell, and by Escuage, or by other Knights Seruice, as well as hee may hold his land by homage Aunceſtrell in Socage.

¶ So as Homage Ancestrel may belong as well to a Tenure by Escuage or Knights seruice, as to a Tenure in Socage, or to a tenure in nature of Socage, whereof there hath bin spoken in the chapter of Socage.

Chap.8. Grand Serieantie. Sect.153.

Tenure per grand Serieantie. Serieantie cõmeth of the French word (Sergeant) 1. Satelles, and (a) Serjeantia idem est quod servitium. And it is called (b) Magna Serieantia or serianteria, * or Magnum servitium, great seruice as well in respect of the excellency and greatnesse of the person to whom it is to be done, (for it is to be done to the King only as of the honour of the seruice it selfe, and so Littleton himselfe in this Section saith, that it is called Magna serieantia or Magnum servitium, because it is greater and more worthy than Knights seruice, for this is Re vera, servitium regale, and not Militare only Fleta saith, Magna autem serieantia dici poterit, cum quis ad eundem cum rege in exercitu cum equo cooperto vel huiusmodi ad patriæ tuitionem fuerit feoffatus.

(a) Glanvil lib.9.ca.4.
(b) Bracton lib.2.35. & 84.85. lib.1 ca.10.
* Fleta lib. .cap.10.lib.2. ca.9 in fine.
(c) Britton, cap.66. fol.164.165. Ockam cap.quod non absolutio.

45.E.3.25. per Finchden.
* Fleta, vbi supra.

De nostre seignior le roy. This tenure hath seuen speciall properties. 1. To bee holden of the King only. 2. It must bee done when the Tenant is able in proper person. 3. This seruice is certaine and particular. 4. The relefe due in respect of this tenure differeth from Knights seruice. 5. It is to bee done within the Realme. 6. It is subiect to neither, Aid pur faire fitz chiualer or file marier. And 7. it payeth no Escuage.

Bracton, lib.2.84.
11.H.4.34.
10.H.4. Auowrie, 267.
F.N.B.83.
10.H.6.ass.demesne,11.

Come de porter le banner de nostre seignior le roy ou de ameſner son host. This great seruice to the King may (as it appeareth hereby) concerne the warres and matters Militarie, for some grand Ser-

22.H.3.tit. Gard Stat.de Ward & relevin.28.E.1.

Cẽnure per graund serieantie est lou vn home tient ses terres ou tenements de nostr̃ Sr̃ le Roy p tiels seruices que il doit en son proper person faire al Roy, come ỏ porter l' banner de nostre seignior le Roy, ou sa lance, ou ỏ ameſner son hoste, ou destre son Marshal, ou de porter son espee deuant luy a son coronement, ou destre s̃ sewer a son coronement, ou son Caruer, ou son Butler, ou destre vn ỏ ses Chamberlains de le resceit de son Eschequer, ou de faire auters tiels seruices &c. Et la cause que tiel seruice est appell grand serieantie est, pur c̃ que il est pluis grand & pluis digne seruice que est le seruice en le tenure descuage. Car celuy q̃ tyent p Escuage nest pas limite per sa tenure de faire ascun pluis especial seruice que ascun auter que tient p escuage doit faire. Mes celuy que tient

Enure by grand Seriantie is when a man holds his lands or tenements of our Soueraign Lord the King by such seruices as hee ought to doe in his proper person to the King, as to carry the Banner of the King, or his Lance, or to lead his Army, or to be his Marshall, or to carry his sword before him at his Coronation, or to bee his Sewer at his Coronation, or his Caruer, or his Butler, or to be one of his Chamberlaines of the receipt of his Exchequer, or to doe other like seruices, &c. And the cause why this seruice is called grand Serieanty is, for that it is a greater and more worthy seruice, than the seruice in the tenure of Escuage. For he which holdeth by Escuage is not limitted by his tenure to doe any more especiall seruice, then any other which holdeth by Escuage ought to doe, but hee which holdeth by grand

tient p grand Serieanty doit faire vn especial ſuice al Roy, que il que tient per escuage ne doit faire.

Serianty ought to doe some speciall seruice to the King which he that holds by Escuage ought not to doe.

teanties are to be done in the time of warre for the safety of the Realme, and some in time of peace, for the honour of the Realme.

¶ *Ou deste son Marshall.* * If the king giueth lands to a man to hold of him to be his Marshall of his host, or to be Marshall of England, or to be Constable of England, or to be high Steward of England, * Chamberlaine of England and the like, these are grand Serieanties, and these & such like grand Serieanties are of great and high iurisdiction, and some of them concerne matters militare in time of warre and some seruices of honour in time of peace. And this is to be obserued that though there were diuers Lords Marshalls of England before the raigne of (z) R.2. Yet King R.2. created Thomas Mowbrey Duke of Norfolke, and first Earle Marshall of England Per nomen comitis Marischalli Angliæ.

* Fleta lib. 1. cap. 10. 11. Eliz. Dier 285. Camden brit. 286. 287.
* Ockam cap. de Scacario consuetudinum.

(z) Inrot. patent. de anno 20. R 2.

¶ *Ou de porter son espee, &c. ou deste son sewer a son Coronement, &c.* These and such like grand Serieanties at the Kings Coronation are seruices of honour in time of peace.

¶ *Deste vn de ses Chamberlaines, &c. ou de faire autiels seruices.* It is also a Tenure by grand Serieantie to hold (a) by any office to be done in person concerning the receipt of the Kings treasure, Quia thesaurus regis respicit regem & regnum; And census regius est anima Reip. so it is Firmamentum belli, & Ornamentum pacis.

(a) Vid. 51. H. 3. statu. 5. 10. E. 3 ca. 11. 14. E 3. ca. 14. 26. H. 8. ca. 2 34. & 35. H 8. ca. 16. 11. E. 4 fo. 1. Pl. Com. 207. 208.

Milites camerarij dicuntur, quia pro camerarijs ministrant, and concerning their office, this is the effect as Ockam (b) saith, Officium camerariorum in recepta consistit in tribus, Scilicet claues arcarum, &c. baiulant, pecuniam numeratam ponderant, & per centenas libras in torulas mittunt. But discontinuance in effect hath worne out their office. And yet they continue their name, and kæpe the keyes of the Treasurie where the Records doe lye.

(b) Ockam cap. qui est Scaccarium. Gernesis Tilburiensis in libero nigro sub custodia camerariorum

And another saith, Camerarius dicitur a camera, quia camera est locus in quem thesaurus recolligitur, vel conclaue in quo pecunia reseruatur. So as camerarius in legall signification est custos regij census: and Willielmus de Bellocampo comes Warwici (held) officium camerarij in Scaccario.

Rot. claus. 6. E. 1. Membr. 1.

Or by any office concerning the Administration of Iustice, quia justicia firmatur solium.

Exlectura Marrowe.

It appeareth by an ancient Record (c) that Varianus de sancto Petro tenuit de domino rege in capite medietatem seriantiæ pacis per servicium inveniendi decem servientes pacis ad custodiendam pacem in Cestria.

(c) Ex Inquisitione post mortem Vriani de Sancto Petro, 4. E. 2. Cestr.

See Ockam of the institution and ancient order of the Exchequer; Dier 4. Eliz. 213. the Alherie of the Exchequer holden by grand Serieantie.

Vid 7. Ass 12. 7. E. 3 57.

¶ *Tiels seruices, &c.* Here by (&c.) is to be vnderstood other like seruices not expressed, as partly appeareth by that which hath beene said, viz. to bee Steward of England, Constable of England, Chamberlaine of England, and other honorable seruices whereof more shall be said in this chapter.

¶ *Ou vn especiall seruice al roy.* That is to say, that this great seruice be specially set downe, for it may consist of diuers branches, as to goe with the King in his warre in the forward, and to returne in the reareward. And also to pay Rent, &c. but yet it must be certaine and particular.

23. H 3. gard. 142.

Section 154.

¶ Item si tenant q̃ tient per escuage morust son heire esteant de pleine age, sil tenoit per vn fee de chiualer, le heire ne paiera forsq̃ C.s. pur reliefe, come est ordeine per l' statute de Magna Carta, cap. 2. Mes si celuy que tient de roy per grand

Also if a tenant which holds by Escuage dieth his heire being of full age, if hee holdeth by one Knights fee, the heire shall pay but a C.s. for reliefe, as is ordained by the statute of *Magna Carta, cap.* 2. But if hee which holdeth of the King by grand Serieanty

Seriantie mozust, son heire esteant de plein age, le heire paiera al Roy pur reliefe le value de les terres ou tenements per an (ouster les charges & repzises) queux il tient del Roy per grand Serieantie. Et est ascauoir, que Sericantia **en Latin**, idem est quod seruitium, & sic Magna Sericantia, idem est quod magnum seruitium.

dieth, his heire being of full age, the heire shall pay to the King for reliefe one yeares value of the lands or tenements which hee holdeth of the King by Grand Serieantie ouer and besides all charges and repriſes. And it is to be vnderstood, that *Serieantia* in Latine, is the same *quod seruitium*, and so *Magna Serieantia* is the same *quod magnum seruitium*.

11.H.4.72.b. ¶ *Paiera al Roy pur releife le value de ses terres, &c.* **And herewith agreeth** 11.H.4.72.b.

¶ *Serieantia idem est quod seruitium.* **Hereby it appeareth that the explanation of ancient words and the true sence of them are requisite, and to bee vnderstood per verba notiora.**

Section 155.

¶ *Enãts per escuage doient faire lour service hors del Roialme.*

3.N.B.83.E. **For hee that holdeth by Cornage or Castle-gard holdeth by Knights Seruice, & is to doe his Seruice within the Realme, but hee holdeth not by Escuage, and therefore** Littleton **materially said Tenant per** Escuage, **and not tenant by Knights Seruice.**

¶ **Item ceux que teignont per escuage doient faire lour seruice hors de roialme mez ceux que teignont per graund serieantie, pur le grienor part doient faire lour seruices deins le Roialme.**

ALso they which hold by Escuage, ought to doe their Seruice out of the Realme, but they which hold by Grand Serieantie (for the most part) ought to do their Seruices within the Realme.

¶ *Pur le greinder part.* **For to beare the Kings Banner, or his Lance, or to lead his Host, and to be his Marshall, &c. may be as well without the Realme, and therefore** Littleton **said (for the greatest part.)**

Sect. 156.

4.H.5.cap.7. 22.E.4.cap.8. *Camden. in Britannia.*

¶ *En le marches de Scotland. Marches* **is either a** Saxon **word and signifieth**, limites bourdours, **or an** English **word,** viz. Markes. Nota, **for that it lyeth neere to** Scotland, **it is said in the Marches of** Scotland, **and yet the Land**

¶ **Item il est dit, que en le Marches de** Scotland, **ascuns teignont de Roy per Cornage, cestascauoir, pur bentier vn cornu, pur garner hões de pais quant ils oyent que le** Scottes **ou auters enemies veignont ou voilent enter en** Engleterre, **quel seruice est**

ALso it is said that in the Marches of Scotland some hold of the King by Cornage that is to say, to winde a horne to giue men of the Countrie warning when they heare that the Scots or other enemies are come or will enter into England, which seruice is grand Seriantie.

graund

graund Serieãty. Mes ſi aſcun tenant tient daſcun auter Seignior que de Roy per tiel ſeruice de Cornage, ceo neſt pas grande Serieanty, mes eſt ſeruice de chiualer, & trait a luy garde & mariage, car nul poit tener per grand Serieanty ſi non de Roy tantſolemẽt.

But if any tenant hold of any other Lord then of the King by ſuch ſeruice of Cornage, this is not grand Seriantie, but it is Knight Seruice. And it draweth to it Ward and Marriage, for none may hold by grand Seriantie, but of the King only.

whereof Littleton here ſpeaketh, lieth in England.

¶ *Per Cornage. Cornagiũ* is deriued (as cornuare alſo is) à cornu, and is as much (as before hath beene noted) as the ſeruice of the Horne. It is alſo called in old bookes Horngeld.

Note a tenure by Cornage of a common perſon is Knights Seruice, of the King it is Grand Seriantie, ſo as the Royall dignitie of the perſon of the Lord maketh the difference of the tenure in this caſe. And I find that there were Cornicularij amongſt the Romans, & dicti fuerunt cornicularij quia cornu faciebant excubias militares, and Magna Seriantia is appropriated only to this tenure.

23.H.tit.gard.148. 8.E.3.66. in fine. 16.E.3. marriage 90. F.N.B.83.

Sect. 157.

¶ Item home poit veier Anno 11. H. 4. que Cokayne adonque chiefe Baron deſchequer, vient en le common banke, portãt ouesques luy la Copie dun recorde in hæc verba; Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendum vnum hominem ad guerram vbicunque infra quatuor Maria, &c. Et il demaunda ſil fuit graund Serieãty ou petite Serieantie. Et Hanke, adonques diſoit, que il fuit graunde Serieantie, pur ceo que il ad ſeruice a faire p corps dun home, & ſil ne purra trouer nul home a faire l'ſeruice pur luy, il Meſme doit faire. Quod alij

ALſo a man may ſee in *Anno* 11. *H.* 4. that *Cokayne* then Chiefe Baron of the Exchequer came into the Common Place, and brought with him the Copie of a Record in theſe words. *Talis tenet tantam terram de Domino Rege per Serieantiam ad inueniendum vnum hominem ad guerram vbicunque infra quatuor Maria, &c.* And hee demanded if this were Grand Seriantie, or petite Seriantie. And *Hanke* then ſaid, that it was Grand Seriantie, becauſe hee had a Seruice to do by the bodie of a man, and if he cannot find a man to doe the ſeruice for him, hee himſelfe ought to doe it. *Quod alij Iuſticiarij conceſſe-*

¶ *Et ſil ne purra trouer nul home a faire le ſeruice pur luy, &c.* Hereby it appeareth that Tenant by Grand Seriantie, may in ſome Caſes make a deputie, and therefore the diuerſitie is, that where the Grand Seriantie is to bee done to the royall perſon of the King, or to execute one of thoſe high and great Offices, there his Tenant cannot make a Deputie without the Kings Licence, and therefore Littleton hath ſaid before that ſuch ſeruices are to bee done in proper perſon. But he that holdeth to ſerue him in his warre within the Realme or by Cornage may make a Deputie.

11.H.4.72. 24.E.3.32. Vide Hil.8.E.1. Modale inter Placita de Banco. Sir Iohn Moyſe Caſe.

11.H.4.72.

(*) Iohannes de Archier qui tenet de Domino Rege in capite per Seriantiæ archerie, &c. in Comitatu Glouc. hæres in cuſtodia.

(*) Claus. 18.H.3.M.5.

¶ *Infra quatuor Maria.* That is within the Kingdome of England, and the Dominions of the ſame Kingdome.

Rot. Eſcaetor. 41.H.3.m.23. Stephen Haringdons caſe.

Now it is good to bee ſeene what perſons that hold by Grand Seriantie may doe and performe that honourable ſeruice in perſon, and who ought not to be receiued thereunto

unto, but ought to make a ſufficient Deputie. At the Coronation of (a) King R. 2. Iohn Wilſhire Citizen of London exhibited his Petition to the high Steward of England in his Court, that where the ſaid Iohn held certaine lands in Hayden in the Countie of Eſſex, of the King by Grand Seriantie, viz. to hold a Towell when the King ſhould waſh his hands before dinner the day of his Coronation, &c. and prayed that he might bee accepted to doe this Office of Grand Seriantie, the iudgement followeth. Et quia apparet per record' de Scaccario Domini Regis in Curia monſtrat' quod prædicta tenementa tenentur de Domino Rege per ſeruitium prædictum. Ideo dictus Iohannes admittitur ad ſeruitium ſuum huiuſmodi faciendum per Edmondum Comitem Cantabrigiæ deputatum ſuum, & ſic idem Comes in iure ipſius Iohannis Manutergium tenuit quando Dominus Rex lauabat manus ſuas dicto die Coronationis ſuæ ante prandium.

(a) 1.R.2.Rot.claus.m.45.

Iuſticiarij cõceſſerunt. (Cokaine) **Donque doit le tenant en ceo cas paier reliefe al value del terre per an?** Ad quod non fuit reſponſum.

runt. Then ſaith *Cokayne*, ought the Tenant to pay reliefe to the value of the land by the yeare? *Ad quod non fuit reſponſum.*

By which Record it appeareth that the ſaid Iohn Wilſhire being of his qualitie, and hauing not any dignitie, could not do and performe this high and honourable ſeruice to the Royall perſon of the King, but did make an honourable Deputie who performed it in his right which is worthy of obſeruation.

Vide 1.R.2.memb.45.

At the ſame Coronation William Furneuall exhibited his Petition in the ſame Court, That where he held the Mannor of Farnham, in the Countie of Buck. with the Hamlet of Cere in the ſame Countie, by the ſeruice to find to the King at his Coronation a Gloue for his right hand, and to ſupport the Kings right hand the ſame day, whiles he held in his hand the Ball Royall, the iudgement followeth. Qua quidem Petitione debite intellecta & facta publica proclamatione ſi quis clameo ipſius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, conſideratum fuit, quod idem Willielmus aſſumpto per eum primitus ordine militari ad ſeruitium prædictum admitteretur faciendum, & poſtmodo (videlicet) die Martis proximo ante Coronationem prædictam Dominus Rex ipſum Willielmum apud Kenington honorifice præfecit in militem, & ſic idem Willielmus ſeruitium ſuum prædictum, dicto die Coronationis iuxta conſiderationem prædictam perfecit & in omnibus adimpleuit. By which it appeareth, that a Knight is of that dignitie, that he may performe this high and honourable ſeruice in his owne perſon, and although this William Furneuall was diſcended of an honourable Family, yet before he was created Knight he could not performe it.

And Sir Iohn de Argentine Chiualier performed the ſeruice of Grand Seriantie, to be the Kings Cup-bearer at the ſame Coronation.

(m) Vide 1.R.2.m.45.

(m) Anne, which was the wife of Sir Iohn Haſtings Earle of Pembroke who held the Mannor of Aſhley in Norfolke of the King by Grand Seriantie, viz. to performe the Office of the Napery at his Coronation, was adiudged to make a Deputie, becauſe a woman cannot doe it in perſon, and thereupon ſhe deputed Sir Thomas Blount Knight, who performed the ſame in her right. Iohn ſonne and heire of Iohn Haſtings Earle of Pembroke, exhibited in the ſame Court his Petition, ſhewing that by his tenure he was to carrie the great Spurres of Gold before the King at his Coronation, &c. The Iudgement is, Audita & intellecta billa prædicta pro eo quod dictus Iohannes eſt infra ætatem, & in cuſtodia Domini Regis quamquam ſufficienter oſtenditur per recorda, & euidentias, quod ipſe ſeruitium prædictum facere deberet. Conſideratum extitit, quod eſſet ad voluntatem Regis, quis dictum ſeruitium iſta vice iure ipſius Iohannis faceret, & ſuper hoc Dominus Rex aſſignauit Edmundum Comitem Marchiæ ad deferendum dicto die Coronationis prædicta calcaria in iure præfati herædis, ſaluo iure alterius cuiuſcunque. Et ſic idem Comes Marchiæ Calcaria illa prædicto die Coronationis coram ipſo Domino Rege deferebat.

Vide 1.R.2.m.45.

By which it appeareth, that the heire before he hath accompliſhed his age of one and twenty yeares, cannot performe this great and honourable ſeruice, but during his minoritie the King ſhall appoint one to performe the ſeruice.

Section 158.

46.E.3.15.a. per Finchden.

THere Littleton ſaith that hee that holds by Grand Seriantie, doth hold by Knights

ET nota que touts q̃ teignont de Roy p grand

AND note that all which hold of the King by Grand

Ser-

Serieanty, teignont de Roy per seruice de chiualrie, & le Roy p̃ ceo auera garde, mariage, & reliefe, mes le Roy nauera de eux Escuage, sils ne teignont de luy per Escuage.

Seriantie, hold of the King by Knights Seruice, and the King for this shall haue Ward, Mariage and Reliefe, but hee shall not haue of them Escuage, vnlesse they hold of him by Escuage.

Seruice which is so said of the effects. And therefore Littleton doth adde that the King shall haue ward, Mariage, and Reliefe, which are the effects of Knights Seruice, &c.

Sometimes in ancient records, Seruitium Militare, is called Seruitium Hauberticum, or Seruitium Brigandinum, or Seruitium Loricatum. And a Haubert or Brigandine signifieth a Coat of Male.

Chap.9. Petit Serjeantie. Sect.159

THEnure p petit serieantie, est lou home tient sa terre ỏ nostre Seignior le Roy ỏ render al Roy annuelment vn arke, ou vn espee, ou vn dagger ou vn cuttel, ou vn launce, ou vn paier de Gants de ferre, ou vn paire de Spoures doze, ou vn sete, ou diuers setes, ou de render autz tiels petit choses touchants le guerre.

THEnure by petie Seriantie is where a man holds his Land of our Soueraigne Lord the King, toyeeld to him yeerely a Bow, or a Sword, or a dagger, or a Knife, or a Lance, or a paire Gloues of Male, or a paire of gilt Spurres, or an Arrow, or diuers Arrowes, or to yeeld such other small things belonging to Warre.

DE nostre seignior le roy. And so Littleton concludeth this chapter that a man cannot hold by grand Serieanty or petite Seriantie, but of the King, and of the King as of his person, and not of any honour or Mannor. And it is to bee obserued that regularly a Tenure of the King as of his person is a Tenure in Capite so called κατα ἐξοχην propter excellentiam, because the head is the principall part of the body, and hee that holdeth of any common person as of his person he in truth holdeth in Capite, but againe κατ' ἐξοχην it is only in common vnderstanding applied to the King, and that Seignior of a common person is called a Tenure in grosse, that is by

Britton, fol 164. Bracton. lib.2.fol.35. Fleta lib.2. cap.9. Ockam cap. quidde auibus oblatis.

it selfe, and not linked, or tyed to any Mannor, &c.

And this Tenure of the King in Capite, is said (a) to be a Tenure of the King as of his Crowne, that is as he is King. (b) And therefore if one holdeth land of a common person in grosse as of his person, & not of any Mannor, &c. and this Seignior escheateth to the King (yea though it be by attainder of treason) he holdeth of the person of the King, and not in Capite, because the originall tenure was not created by the King. And therefore it is directly said that a Tenure of the King in Capite is when the land is not holden of the King as of any Honor, Castle or Mannor, &c But when the land is holden of the King as of his Crowne.

(a) *Bracton, lib.2.fo.87.*
(b) *3.E.3.tenures.B.94. 30 H.8.43. 28.H.8.Liuery.B.57. 29.H.8.ibid.58. 6.H.8.Diuers,58. Vid.Lettatus de 1.E.6.ca.4. F.N.B.5.K.*

Note that an Honor is the most noble Seigniorie of all others, and originally Created by the King, but may afterward be granted to others. See for the creation of an Honor. 31.H.8. ca.3. 33.H.8.cap.37.38 37,H 8.cap.18.

And it is to be obserued that a man may hold of the King in capite, or of his Crowne aswell in Socage as by Knights seruice.

¶ *De render al Roy annuelment vn arke, ou vn espee, &c.* As grand Seriantie must be done by the body of a man, So petite Seriantie hath nothing to doe with the body of a man, but to render some things touching warre, as a bowe, a sword, a dagger, a knife, a launce, a paire of gantlets of iron, or shafts and such like.

Magna Carta cap.27.

It is to be obserued that grand Seriantie or Knights seruice is not in law called Liberum Seruitium, as Socage, is but per feodum vnius militis, &c but finde the King so many Ships for

Regist.fo.2. F.N.B.fo.1.

for his paſſage is called liberum ſeruitium, and therefore it is ſaid, Per liberum ſeruitium ad inueniendum nobis quinque naues ad tranſitum noſtrum ad mandatum noſtrum. And therefore cleerely ſuch a Tenure is neither Grand Serieantie, nor Knights Seruice, becauſe nothing is to be done by the bodie of any man, nor in that caſe, touching warre, but Ships to be found. And this is the reaſon that Littleton yeelds of the examples he doth here put, becauſe that ſuch a Tenant by his Tenure ought not to goe, nor to doe any thing in his perſon touching warre. And herewith agreeth Bracton, Ex paruis Serjeantijs quæ non reſpiciunt Regem, nec Patriæ defenſionem nullum competere debet maritagium nec cuſtodiam, &c.

Bract. li. 2. fo. 35.

If a man holdeth land of the King, to find an horſe of ſuch a price, and a Saddle and a bridle by fortie dayes, or any other time when the King goeth with his Armie againſt Wales, this is Petite Serieantie, and no Grand Serieantie for the cauſe aforeſaid.

9. H. 3. Gard. 145.

Section 160.

¶ *Tiel ſeruice eſt forſque Socage, &c.* But as it hath beene ſayd, the dignitie of the perſon of the King, giueth the name of Petit Serjeantie, which in caſe of a common perſon ſhould be called plain ſocage ab affectu: for it ſhal haue ſuch effects or incidents as belong to Socage, and neither ward nor marriage, &c. for they belong to Knights Seruice.

9. H. 3. Gard. 145.

CEt tiel ſeruice ne forſque Socage en effect, pur ceo que tiel Tenant per ſon Tenure ne doit aler ne fayre aſcun choſe en ſon proper perſon, touchant le guerre mes de render & paier annualment certaine choſes al Roy, ſicõe home doyt payer un Rent.

AND ſuch Seruice is but Socage in effect, becauſe that ſuch Tenant by his Tenure ought not to goe nor doe any thing in his proper perſon touching the war, but to render & pay yearly certaine things to the King, as a man ought to pay a Rent.

Mag. Chart. ca. 28. Vid. Stat. de Wards & Reliefs. 28. E. 1.

Of this Tenure the great Charter in the perſon of the King ſaith thus, Nos non habebimus cuſtodiam hæredis, &c. occaſione alicuius paruæ Serjeantiæ quam tenet de nobis per ſeruitium reddendo nobis cultellos, ſagittas, &c.

Section 161.

¶ Of this ſufficient hath beene ſayd before, ſauing that parua Serjeantia is only appropriate to this Tenure.

Vid. Tell. 2.

CEt nota que hõe ne poyt tener per graund Serjeantie, ne per petit Serjeanty, ſi non de Roy, &c.

AND note that a man cannot hold by grand Serjeantie, nor by petite Serjeantie, but of the King, &c.

Bracton lib. 3. Tract. 2. Britton fol. 164. Mirror. cap. 2. §. 18. Lib. 10. fol. 123. 124. The Mayor of Lynns Caſe. 40. Aſſ. p. 27. 43. E. 3. 32. 21. E. 4. 53. & 54. 21. H. 7. 15. 2. E. 3. cap. 3.

BVrgage, in Latyne Burgagium, is derived of this word Burgus, which is Vicus, Pagus, or Villa, a Towne, and it is called a Burgh, becauſe it ſendeth Burgeſſes to Parliament.

(b) Bracton lib. 3. fol. 124. Fleta lib. 1. cap. 47.

Of Burghs ſome be incorporate and ſome not, and ſome be walled, and ſome not. (b)

CTenuit en Burgage eſt, lou auntient Burgh eſt, de que le Roy eſt Seignior, &

ceux

¶ TEnure in Burgage is where an antient Burrough is, of the which the king is lord,

ceux que ont Tenements deins le Burgh teignont del Roy lour Tenemẽts que chescun Tenant pur son Tenement doit payer al Roy vn certain Rent per an, &c. Et tiel Tenure nest forsque Tenure en Socage.

and they that haue tenements within the Burrough, hold of the King their tenements, that euerie Tenant for his Tenement ought to pay to the King a certaine rent by yeare, &c. and such Tenure is but Tenure in Socage.

was in former times taken for those Companies of ten Families, which were one anothers pledge, and therfore a Pledg in the Saxon tongue a Borhoe, whereof (some take it) that a Burgh came, whereof also commeth headborough, or Borowhead, Capitalis Plegius, a Chiefe Pledge, viz. the chiefe man of the Borhoe, whom Bracton calleth Frithburgus, and hereof also commeth Burghbote, which as Fleta saith, signifieth Quietanciam reparationis murorum ciuitatis aut Burgi.

Euerie Citie is a Burgh, but euerie Burgh is not a Citie, whereof more shall be said hereafter. And the termination of this word Burgagium, (as before hath beene noted) signifieth the seruice whereby the Burgh is holden. And of this word (Burgh) two antient and noble Families take their names, viz. de Burgo, and de Burgo caro, Burchier.

¶ *De que le Roy est Seignior.* But it may be holden of another as by that which immediatly followeth appeareth. F.N.B. 64.d

Sect. 163.

ET meisme le manner est, lou vn auter Seigniour Esperitual ou Temporall, est Seignior de tiel Burgh, a les Tenants de Tenements en tiel Burgh teignont de lour seignior a payer, chescun d'eux vn annuall Rẽt.

AND the same manner is, where another Lord Spiritual or Temporall is Lord of such a Burrough, and the Tenants of the Tenements in such a Burrough hold of their Lord, to pay each of them yearely an annuall Rent.

¶ This is euident, and needeth no explanation, onely this by the way is to be obserued, That Bishops being Lords of Parliament, haue not beene called Lords Spirituall so lately, as some haue imagined. 16.R.2.ca.5. 1.H.4.ca.2.&c.

Section 164.

ET est appel tenure en Burgage, pur ceo que les Tenements deins le Burgh sont tenus del Seigniour del Burgh per certaine rent, &c. Et est ascauoire que les antient villes appel Burghs

AND it is called Tenure in Burgage, for that the Tenemẽts within the Burrough be holden of the Lord of the Burrough by certaine rent, &c. And it is to wit, that the antient Townes called Burroughs, bee the

¶ *Per certaine Rent, &c.* By (&c.) here is implied fealtie, or other service, as to repaire the house of the Lord, &c.

¶ *Les antient Villes appel Burghes.*

So as a Burgh is an antient Towne holden of the King or any other lord, which sendeth Burgesses to the Parliament.

And it is to be obserued, that Burgh and Burie haue all one signification, as Canterbutie, Burie Saint Edmond, Sudburie, Salisburie, Banbury, Heytesbury, Malmesburie, Shaftesbury,

Shaftesbury, Teukesbury, and others send Burgesses to the Parliament, Vide pro Villis, Parochijs & Hamlettis postea, Sect. 171.

¶ *Cities.* Ciuitas, whereof commeth the word Citie. A Citie is a Borough incorporate, which hath, or haue had a Bishop: and though the Bishopricke be dissolued, yet the Citie remayneth.

Lamb. fo. 125.

In the time of William the Conquerour it is declared in these words, Item nullum mercatum, vel forum sit, nec fieri permittatur nisi in ciuitatibus regni nostri, & in Burgis clausis & muro vallatis & castellis, & locis tutissimis, vbi consuetudines regni nostri, & jus nostrum comune, & dignitates coronæ nostræ quæ constitutæ sunt à bonis prædecessoribus nostris deperire non possunt, nec defraudari, nec violari, sed omnia rite, & per judicium & justitiam fieri debent: & ideo castella & burgi & ciuitates sunt & fundatæ & edificatæ scilicet ad tuitionem gentium, & populorum regni, & ad defensionem regni, & ideirco observari debent cum omni libertate & integritate, & ratione. So as by this it appeareth that Cities were instituted for three purposes: First, Ad consuetudines regni nostri, & jus nostrum commune & dignitates coronæ nostræ conseruand'. 2. Ad tuitionem gentium & populorum regni. And thirdly, Ad defensionem regni. For conseruation of Lawes, whereby euery man enioyeth his owne in peace: for tuition and defence of the Kings subiects, and for keeping the Kings peace in time of sudden vprores, And lastly for defence of the Realme against outward or inward hostility.

sont les pluis anciēt villes que sont deins Engleterre, car ceux villes q̄ ore sont cities, ou counties, en auncient temps fueront burghes, & appelles burges, car de tielx auncient villes, appelles Burghes, veignont les Burgesses al Parliament, quant le Roy ad summon son parliament.

most anciēt townes that be within England, for the Townes that now bee Cities or Counties, in old time were Boroughes, and called Boroughs, for of such old Townes called Boroughes, come the Burgesses of the Parliament, to the Parliament, when the King hath summoned his Parliament.

Civitas & vrbs in hoc differunt, quod incolæ dicuntur civitas, vrbs verò complectitur ædificia, but with vs the one is commonly taken for the other. Villeins sont coultivers de fiefe demurants in villages vpland, car de ville est dit villen, & de Boroughes Burgesses, & de cities, citizens.

Mirror, cap. 2 §. 18. Britton, fo. 87.

Euery Borough incorporate that had a Bishop within time of memory is a Citie, albeit the Bishopricke be dissolued, as Westminster had of late a Bishop, and therefore it yet remaines a Citie. The Burgesse of Cambridge, an ancient Citie, as it appeareth by a iudiciall Record (which is to be preferred before all others) where Mos ciuitatis Cantabrigiæ is found by the oath of 12. men the recognitors of that assise, which (omitting many others) I thought good to mention, in remembrance of my loue and dutie Almæ Matri Academiæ Cantabrigiæ.

Mich. 7. R. 1. Rot. 1. (which was in anno Dom. 1195.) in an Ass. of darreine presentment for the Church of St. Peters in Cambridge.

There be within England two Archbishoprickes, and 23. other Bishoprickes therefore how many Cities there be, and Cambridge and Westminster being added, there are in all 27. Cities within this Realme, and may be more, then at this time I can call to memory.

It is not necessary that a City be a County of it selfe, as Cambridge, Elye, Westminster, &c. are Cities, but are no Counties of themselues, but are part of the Counties where they be.

¶ *Counties*, or Shires, the one taken from the French, the other from the Saxon, in Latyn Comitatus. Counties are certaine circuits or parts of the kingdom, into the which the whole Realme was diuided for the better gouernment thereof, so as there is no land, but it is within some County. And euery of them is gouerned by a yearly officer which we call a Shireue. which name is compounded of these two Saxon words Shire and reue, (i) præpositus or præfectus comitatus; but hereof more hereafter in his proper place shall be spoken. There be in England 41. Counties, and in Wales twelue.

¶ *Veignont les Burgesses al Parliament, &c.* Parliament is the highest, and most honourable and absolute Court of Iustice of England consisting of the King, the Lords of Parliament, and the Commons. And againe, the Lords are here deuided into two sorts, viz. Spirituall and Temporall; And Cōmons are deuided into three parts, viz. two Knights of Shires or Counties, citizens out of Cities, and Burgesses out of Boroughs. The words of the writ to the Shiriffe for the election being, Duos milites gladijs cinctos magis idoneos, & discretos comitatus tui, & de qualibet ciuitate comitatus tui duos ciues, & de quolibet

Lib. 10. fo. 123. 124. Vide Deuant, Sect. 97.

quolibet Burgo duos Burgenſes de diſcretioribus, & magis ſufficientibus, &c. All which haue voyces, and ſuffrages in Parliament; You ſhall reade in the Parliament Rolls that (as hath beene ſaid) there is Lex & conſuetudo parliamenti, quæ quidem lex quærenda eſt ab omnibus, ignorata à multis, & cognita à paucis. Of the members of this Court ſome be by diſcent, as ancient Noble men, ſome by Creation, as Nobles newly created, ſome by ſucceſſion, as Biſhops, ſome by Election, as Knights, Citizens, and Burgeſſes. *Vid Sect. 3.*

It is called Parliament becauſe euery member of that Court ſhould ſyncerely and diſcreetly Parler la ment for the general good of the Cõmon wealth. which name it hath alſo in Scotland, and this name before the Conqueſt was vſed in (a) the time of Edward the Confeſſor, William the Conquerour, &c. It was anciently before the Conqueſt called Michel Sinoth michel gemote, ealſa Witenage mote, that is to ſay, the great Court or meeting of the King and of all the wiſe men, ſometime of the King with the counſell of his Biſhops, Nobles, and wiſeſt of his people. This Court the Frenchman calleth Les Eſtates, or Laſſemble des Eſtates.) In Germany it is called a Diet: for thoſe other Courts in France that are called Parliaments, they are but ordinary Courts of Juſtice, and (as Paulus Iouius affirmeth) were firſt eſtabliſhed by vs. 4.H.8.cap.8. (a) *Treatiſe de modo tenend. Parliam. 21.E.3.fo.60.a. Iohannes de Rupeſcella tempore regis Iohannis. Pol.Virgil.lib.3. tempore H.1. W.1. 3.E.1. in the title.*

The King of England is armed with diuers councells, one whereof is called Commune concilium, and that is the Court of Parliament, and ſo it is legally called in Writs and iudiciall proceedings Commune concilium regni Angliæ. And another is called (b) Magnum concilium: this is ſometime applied to the vpper houſe of Parliament, and ſometime out of Parliament time to the Peeres of the Realme, Lords of Parliament, who are called Magnum concilium regis, for the proofe whereof take one (c) Record, for many in the fift yeare of King H.4. at what time there was an exchange made betweene the King, and the Earle of Northumberland, whereby the King promiſeth to deliuer to the Earle lands to the value, &c. Per advice & aſſent des eſtates de ſon realme & de ſon Parliament (parenſi que Parliament ſoit devant le feaſt de St. Lucy) ou auterment per advice de ſon graund councell, & auters eſtates de ſon Realme, que le Roy ferra aſſembler devant le dit feaſt, in caſe que le Parliament ne ſoit. And herewith agreeth the Act of Parliament in 37 E.3.cap 18 where it is ſaid, before the Chancellour, Treaſurer, and great Councell. Thirdly, (as euery man knoweth) the King hath a priuie Councell for matters of ſtate, (as for example) (d) Henricus de bello monte Baro de magno & de priuato conſilio regis juratus; and many others before and after. The fourth Councell of the King are his Iudges of the Law for Law matters, and this appeareth frequently in our (e) bookes, and muſt be intended, when it is ſpoken generally by the Councell it is to bee vnderſtood Secundum ſubiectam materiam; for example if it be legall, then by the Kings Councell of the Law, viz. his Iudges. (b) *Bracton, lib.1.ca.2. Regiſt.280.* (c) *27.Aug.5.H.4* (d) *In Dorſ. Claus. 16.E.2.M.5.* (e) *43.Aſſ.15 27.H.6.5. 1 R.3.11 Regiſt.121.122. 123. 4.E.3.2. 19.E.3.35. 3.Aſſ.15. 19.E.3. iudgement 174. W.1.ca.1. Laſtat. de templar. 16.R.2.ſtat. de Prærogat. See the ſame publiſhed by Mr. Lambert.*

Now for the Antiquitie of this high Court of Parliament, whereof Littleton here ſpeaketh; It appeareth that diuers Parliaments haue beene holden long before and vntill the time of the Conquerour, which be in print, and many more appearing in ancient Records and Manuſcripts. (f) Le Roy Alfred aſſembler' ſes Comities, &c & ordeina pur vſage perpetual que deux foitz per an ou pluis ſovent pur miſter in temps de peace ſe aſſemblerent a Londres a Parlementer ſur le guidament del people de Dieu, & coment ſoy garderent de pecher, viueront en quiet, & receiueront droit per vſages & ſanits judgements per ceſte eſtate ſe fieront pluſors ordinances per pluſors Roys jeſque a temps le Roy que ore eſt, que fuit le Roy E.1. The concluſion of that great Parliament holden by King Ethelſtan at Grately is very remarkeable, which I haue ſeene in theſe words: All this was enacted in that great Synod or Councell at Grately, whereat was the Archbiſhop *Wolfehelme* with all the Noblemen and wiſe men which King *Ethelſtan* called together. (f) *Mirror.ca 1.§.2. Vid. Statutes de 4.E.3. ca.14. & 36.E.3.ca.10.*

There haue beene in the time of, and ſince, the Conqueſt in the raignes of H.1. King Stephen, H.2. R.1 King Iohn, H.3. &c. 280. Seſſions of Parliament, and at euery Seſſion diuers Acts of Parliament made, no ſmall number whereof are not in print. *Mirr.ca.2.§.4.7 10,14. cap.4.de ſaults. & cap de Homicide.cap.1 §.13.ca.4 de Pœna. Ockam quid curo Ver. Math.Pariſ.312.313.*

The turiſdiction of this Court is ſo tranſcendent, that it maketh, inlargeth, diminiſheth, abrogateth, repealeth and reuiueth Lawes, Statutes, Acts and Ordinances concerning matters Eccleſiaſticall, Capitall, Criminall, Common, Ciuill, Martiall, Maritime and the reſt. None can begin, continue or diſſolue the Parliament but by the Kings authority. Of which Court it is ſaid (a) Que il eſt de treſgrand honor & Iuſtice, de que nul doit imaginer choſe diſhonorable. (b) Habet rex curiam ſuam in concilio ſuo in Parliamentis ſuis, preſentibus prælatis, comitibus, baronibus, proceribus, & alijs viris peritis vbi terminatæ ſunt dubitationes judiciorum, & novis injurijs emerſis nova conſtituuntur remedia, & vnicuique iuſtitia prout meruerit retribuetur ibidem. But this properly doth belong to the Jurisdiction of Courts, and therefore this little taſte hereof ſhall ſuffice. (a) *Pl.Com.398.b. Dalton & Stud ca. 55.fo.164.* (b) *Fletalib.2.ca.2. Forteſcue de laudibus legum Angliæ. Bracton, lib.1.ca.2.*

Sect. 165.

¶ *Vstomes & vsages.* Consuetudo, is one of the maine triangles of the Lawes of England, those Lawes being deuided into Common Law, Statute Law and Custome. Of which it is said, * that Consuetudo quandoque pro lege seruatur, in partibus vbi fuerit more vtentium approbata, & vicem legis obtinet, longæui enim temporis vsus & consuetudinis non est vilis authoritas (c) Longa possessio (sicut jus) parit jus possidendi, & tollit actionem vero domino.

(*) *Bract. lib. 1. ca. 3. fol. 2.*

(c) *Idem lib. 2. fol. 52.*

Of euery custome there be two essentiall parts, Time and Vsage, Time out of minde, (as shall be said hereafter) and continuall and peaceable Vsage without lawfull interruption.

¶ **Item, pur greinder part tielx burghes ont diuers customes & vsages que nont pas auters villes. Car ascuns burghes ont tiel custome, q̃ si home ad issue plusors fits & mozust, le puisne fits enheriteñ touts les tenements que fueñ a son pere deins m̃ le burgh come heire a son pere per force de custome. Et tiel custome est appel Burgh English.**

Also for the greater part such Boroughes haue diuers customes and vsages, which bee not had in other towns, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the youngest son shall inherit all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called Borough English.

¶ *Que nont pas auters villes.* **It is necessary to bee knowne what customes may be** alledged in an vpland towne which is neither Citie nor Borough, * In an vpland towne that is neither in Citie nor Borough, such a Custome to deuise lands cannot be alledged. Neither in an vpland towne can there be a custome of Borough English or Gauelkinde, but these are customes which may be in Cities or Boroughes. (d) Also if lands be within a Manor, Fee, or Seigniory, the same by the custome of the Mannor, Fee, or Seigniory may be deuisable, or of the nature of Gauelkinde or Borough English. * But an vpland Towne may alledge a custome to haue a way to their Church, or to make By-lawes for the reparations of the Church, the well ordering of the Commons and such like things. And it is to bee obserued, that in speciall cases a custome may be (e) alledged within a Hamlet, a Towne, a Burgh, a Citie, a Mannor, an Honour, an Hundred, and a Countie: but a custome cannot be alledged generally within the kingdome of England, for that is the Common Law.

(*) 44.E.3.33. 40.Ass.4.27.41.21.E.4.54 43.E.3.32.

(d) 21.E.4.53.54.

(*) 21.E.4.54. 15.E.4.29. 11 H.7.14. 44.E.3.18. 21.H.7.40.

(e) *Bract. lib.4.271. 34.E.1.detinue 60. 17.E.2 detinue 58. 3.E.3.dett.156. 30.E.3.25 39.E.3.6.9.10. 31.E.3.render 6. 17.E.3.27. 21.E.4.28. 22.E.4 8. 7.E.3.51. 30.E.3.23. 34.H.8.Dier.54 F.N.B.122. 5.E.3.tresp.13.*

¶ *Le puisne fits enheritera.* **And yet by some customes the youngest brother shall inherit,** for Consuetudo loci est obseruanda.

¶ *Touts les terres ou tenements:* **Either in fee simple, fee taile,** or any other inheritance. If lands of the nature of Borough English be letten to a man and his heires during the life of I.S. and the Lessee dieth, the youngest sonne shall enioy it.

Vide Glanuil. lib. 7 cap. 3. 9.

¶ *Borough English;* **So called because this custome was first,** (as some hold) in England.

Sect. 166.

¶ **And this is called Frank banke,** Francus bancus. Consuetudo est in partibus illis, quod vxores maritorum defunctorum habeant francum bancum suum de terris Sockmannorum tenent' nomine dotis.

Bract. lib. 4. tract. 6 ca. 13. F.N.B.150.a. Pl.Com.413.

¶ **Item, en ascun burghes per le custome feme auera pur sa dower touts les tenements q̃ fueront a sa baron, &c.**

Also in some Boroughes by custome, the wife shall haue for her dower all the tenements which were her husbands.

¶ Quia

¶ *Que fueront a ſa baron, &c.* **Here is implied by** (&c.) **that in** (l) F.N.B.150.
ſome places the wife ſhall haue the moity of the lands of her husband ſo long as ſhe liues vn-
maried, as in Gauelkinde. **And of lands in** Gauelkinde **a man ſhall be Tenant by the Curteſie** 10.E.3.aide.129.
without hauing of any iſſue. In ſome places the widow ſhall haue the whole; or halfe Dum
ſola & caſta vixerit, **and the like.**

Sect. 167.

¶ **Item, en aſcuns burghes per le cuſtome hõe poit deuiſer per ſon teſtament les terres & tenements que il ad en fee ſimple deins meſme l'burgh al temps de ſõ mozant, & per force de tiel deuiſe, celuy a que tiel deuiſe eſt fait, apres le mozt le deuiſor poit enter ẽ les tenements iſſint a luy deuiſes, a auer & tener a luy ſolonque la forme & effect del deuiſe, ſans aſcun liuerie ỏ ſeiſin deſtre fait a luy, &c.**

ALſo in ſome Boroughs by the cuſtome, a man may deuiſe by his Teſtament his Lands and Tenements which hee hath in Fee ſimple within the ſame Borough at the time of his death, and by force of ſuch deuiſe, hee to whom ſuch deuiſe is made after the death of the deuiſor, may enter into the Tenements ſo to him deuiſed, to haue & to hold to him after the forme & effect of the deuiſe, without any liuerie of ſeiſin thereof to bee made to him, &c.

¶ D*euiſer.* **This is a French word and ſignifieth** ſermocinari **to ſpeake,** for teſtamentum eſt teſtatio mentis, & index animi ſermo. **So as a deuiſer per ſon teſtament, is to ſpeake by his Teſtament what his minde is to haue done after his deceaſe.**

¶ *Per ſon teſtament.* Teſtamentum eſt (m) duplex 1. in ſcriptis. 2. nuncupatiuum ſeu ſine ſcriptis. **And in ſome Cities and Boroughs Lands may** (n) **paſſe as chatels by will nuncupatiue or paroll without writing.** Reuera (o) terminatum eſt quod poteſt legari vt catallum tã hæreditas quam perquiſitum per Barones London, & Burgenſes Oxon. ideo verum eſt quod in Burgis non iacet aſſiſa mortis anteceſſoris. **But in Law moſt commonly,** Vltima voluntas in ſcriptis, **is vſed where Lands or Tenements are deuiſed, and** teſtamentum **when it concerneth chattels.**

(m) *Vide Sect.* 586.

(n) *Britton fol.* 164. 212.b.

(o) *Bract. lib.* 4 *fol.* 272. *Fleta lib.* 5. *cap* 5. & *lib.* 2. *cap.* 50.

¶ *Ses terres ou tenements.* **And by the ſame cuſtome he may deuiſe** a Rent out of the ſame Lands and Tenements.

¶ *Que il ad en fee ſimple.* **For Lands in taile are not deuiſable by** will, and therefore he in this place **neceſſarily added** (que il ad en fee ſimple) **and purpoſely** omitted the ſame in the clauſe **concerning Borough Engliſh, becauſe there an eſtate taile is** included.

4.E.3.53. 7.H.6.1. 14.H.8.5. 22. *Aſſ.* 78. *Abr. Aſſ.* 118.b. 4.E.2. *mordanc.* 39. 43.E.3. 17. F.N.B.196. 21.H.6.38.a. 7.E.2.11. *mordanc.*

¶ *Poet enter.* Note **the cuſtome of a Citie or Borough concerning** the deuiſe of lands is, Quod liceat vnicuique ciui ſiue burgenſi, &c. eiuſdem ciuitatis ſiue burgi tenementa ſua in eadem ciuitate ſiue burgo in teſtamento ſuo in vltima voluntate ſua, tanquam catalla ſua legare cuicunque voluerit, &c. (p) **Now if a man deuiſeth either by ſpeciall name or generally, goods or chattels reall or perſonall, and dieth, the deuiſee cannot take them without the aſſent of the Executors. But when a man is ſeiſed of lands in fee, and deuiſeth the ſame in fee, in taile, for life, or for yeares, the deuiſee ſhall enter, for in that caſe the Executors haue no medling therewith. And in the caſe of a deuiſe by will of lands, whereof the Deuiſor is ſeiſed in fee, the freehold or intereſt in Law is in** (q) **the Deuiſee before hee doth enter, and in that caſe nothing** (r) **(hauing regard to the eſtate or intereſt deuiſed) diſcendeth to the heire. But if the heire of Deuiſor entreth and holdeth the Deuiſee out, hee may either enter as** Littleton **here ſaith, or haue his writ called** ex graui quærela, **and this writ (without any particular plage) is incident to the cuſtome to deuiſe, for otherwiſe, if a diſcent were caſt before the deuiſee did enter, the deuiſee ſhould haue no remedie. After an actuall poſſeſſion this writ lyeth not, for then the deuiſee may haue his ordinary remedie by the Common Law.**

(p) 2.H.6.16. 27.H.6.8. 2.E.4.13. 21.E.4.21. 4.H.7.16.

(q) 4. *Mar. Br. tit. deuiſe* 49.

(r) *Regiſt. fol.* 244 39 *Aſſ. pl.* 6. 3.P.3. *deuiſe* 12 29. *Aſſ.* 31. 34.E.3. *tit formdon. pl poſteros.* 30.H.8 *deuiſe* 28. F.N.B.198.199. &c. *Britton. fol.* 212.b.

And well said Littleton that Lands and Tenements were deuisable in Burghes by cu-
stome, for that (f) at the Common Law no Lands or Tenements were deuisable by any
last will and Testament, nor ought to be transferred from one to another, but by solemne li-
uerie of seisin, matter of record, or sufficient writing, but as Littleton here saith, that by certaine
priuate customes in some Burghes they are deuisable. But now since Littleton wrote by the
Statutes of 32. and 34. H.8. Lands and Tenements are generally deuisable by the last will
in writing of the tenant in fee simple, whereby the ancient (t) Common Law is altered, whe-
vpon many difficult questions, and most commonly disherison of heires (when the Deuisors
are pinched by the messengers of death) doe arise and happen. But (u) these Statutes take
not away the custome to deuise, whereof Littleton speaketh: for though Lands deuisable by
custome be holden by Knights Seruice, yet may the Owner deuise the whole Land by force
of the custome, and that shall stand good against the heire for the whole. But the deuise of lands
holden by Knights Seruice by force of the Statutes is vtterly void for a third, and the same
shall discend to the heire. If he hath any Lands holden by Knights Seruice in Capite, and
Lands in Socage, he can deuise but two parts of the whole, but if he hold Lands by Knights
Seruice of the King, and not in Capite, or of a meane Lord, and hath also Lands in Socage,
he may deuise two parts of his Land holden by Knights Seruice, and all his Socage lands.
If he holds any Land of the King in Capite, and by Act executed in his life time he conueyeth
any part of his Lands to the vse of his wife, or of his children, or payment of his debts,
though it bee with power of reuocation, hee can deuise by his will (x) no more, but
to make vp the Land so conueyed two parts of the whole. And if the Lands so con-
ueyed amount to two parts or more, then hee can deuise nothing by his will. But if he
hath land only that is holden in Socage, then he may deuise by his will all his Socage lands,
so as it is apparant that the benefit of the Lords was more carefully prouided for, then the good
of the heire. But if a man holding some Land of the King by Knights Seruice in Capite, con-
ueyed two parts of his Land to the vse of his wife for life, now (as hath beene said) hee can de-
uise no part of the residue, but yet he may by his will deuise the reuersion of the two parts so
conueyed to his wife: for the intention of the Act is to giue power to dispose two parts intirely.

If the Deuisor leaue a full third part of the Land immediatly to discend in Fee simple or in
taile, he may deuise the other two parts in Fee simple if a third part be not left, it shall be made
vp according to the Act. But hereditaments that are not of any yearely value, as bona &
catalla felonum & fugitiuorum, waifes, estrayes, and the like can neither be left to discend in
any part of the third part, or deuised as part of the two parts. But yet if such Franchises of
vncertaine value be holden of the King in Capite, they shall restraine the deuise of all his lands
and make it void for a third part. So it is if a man hath a reuersion expectant vpon an estate tail
dry & fruitles holden of the King by Knights Seruice in Capite, yet that shall restraine him to
deuise but two parts of his lands only. And where the Statute speakes of a remainder, it is
to be intended only of such a remainder, as may draw Ward & Mariage by the Common Law.
As if a reuersion vpon a state for life be granted to one for life, the remainder in fee, during the
life of the grantee for life it is not within the Statute, but if he dieth this is such a remainder,
as is within the Statute, although it be dry and fruitlesse. If a gift in taile or a lease for life be
made, the remainder in fee, this remainder in fee is not within the Statute. But if a man hath
Lands holden by Knights Seruice in Capite in possession, reuersion, or remainder, and also
seised of Socage Land, and deuise by his will all his lands, and after he selleth away the Ca-
pite Land, or that land is recouered from him, the will is good for the whole Socage land. The
values both of the third part, and the two parts of the lands shall be taken as they happen to be
at the time of the death of the Deuisor, for then his will takes effect.

He that holds by Knights Seruice in chiefe deuiseth by his will a Rent, common or other
profit as shall amount to the value of two parts out of all his Lands, this Rent issueth only out
of the two parts, & the third part is free of it. And if he hath lands holden by Knights Seruice,
& not in Capite, he may charge two parts of the Knight Seruice Land as is aforesaid, and all
his Socage Land, &c. And if he hath only Socage Land, hee may by his will charge it at his
pleasure, so as the Kings and Lords third part is free, and the heires two parts charged, and
this is only only by force of the Statute of 34 H.8.

If a man make a feoffment in fee of his Lands holden by Knights Seruice to the vse of
such person and persons, and of such estate and estates, &c. as he shall appoint by his will, in
this Case by operation of Law, the vse and state rests in the Feoffor, and he is seised of a qua-
lified fee. In this case, if the Feoffor limit Estates by his will, by force, and according to his
power, there the vses and estates growing out of the feoffment are good for the whole, and the
last will is but directorie. But in that case if the Feoffor had deuised the land (as Owner there-
of) without any reference to the feoffment and power thereby giuen then taking effect by the
will, it is void for a third part. But if he had formerly conueyed two parts to the vse of his
wife, &c. and after deuised the residue by his will without any reference to his power by the
feoffe-

(f) 27. H.8. cap. 10. Britton. fol. 212. 78. b. 164. Vide. before in this Section. 32. H.8. ca 2. 34. H.8. cap. 5.

(t) Vide lib. 3. fol. 25. &c. in Butler & Bakers case. Lib. 6. fol. 16. & 76. Lib. 8. fol. 84. 85. Lib. 9. 133. Lib. 10. 82. 83. 84. Lib. 11. fol. 34. Lib. 1. fol. 25. a.

(u) Dier 4. & 5. Ph. & Mar. 155. an. 6. Eliz. Dalison. Pasch. 20. Eliz. betweene Barker and his wife plaintiffe and William Lang defendant in a Writ of partition. Bendloes adiudged.

(x) Lib 6 fol. 17. 18. Sir Edw. Clares case. Lib. 3. fol. 34. b. Butler & Bakers cas.

Lib. 10. fol. 80. 81. Leon. Lowyes case.

Leon. Lowyes case, & Butler & Bakers case. Vbi supra.

Leon. Lowyes case. Vbi supra, fol. 81.

Lib. 8. fol. 84. 85. Sir Richard Texhals case.

Lib. 3. fol. 33. Butler & Bakers case.

Lib. 6. fol. 17. 18. in Sir Edw. Clares case.

feoffment, yet this will shall enure to declare the vse vpon the feoffement, because hee had no power as Owner of the Land to deuise any part of it. But if the feoffement had beene made to the vse of his last will, although he deuiseth the Land with reference to the feoffment, yet it taketh effect only by the will, and not by the feoffement. All which and many other points of intricate and abstruse learning you shall more largely reade in my Reports.

¶ *Sauns ascun liuerie de seisin deste fait a luy, &c.* For in his life time Liuery of seisin could not be made becaus his will is ambulatorie till his death, and no estate passeth during his life, neither can Liuery be made after his decease, for then it commeth too late. 40.Ass.38

Here (&c.) implyeth that the deuise is good without any Attornement of any Lessee or Tenant.

Section 168.

¶ NOta coment q̃ home ne poit granter ne doner ses tenements a sa feme, durant le couerture, pur ceo que sa feme & luy ne sont forsq; vn person en ley, vncore per tiel custõe il poit deuiser per testamẽt, ses tenements a sa feme, a auer & tener a luy en fee simple, ou en fee taile, pur termẽ de vie ou pur terme des ans, pur ceo que tiel deuise ne prist effect forsque apres la mort le deuisor, car touts deuises ne preignõt effect forsq; apres la mort le deuisor. Et si home fait a diuers tẽps diuers testaments, & diuers deuises, &c. vncore le darrein deuise & volũt fait p luy estoiera, & lauters sõt voides.

ALso though a man may not grant nor giue his tenements to his Wife during the couerture, for that his Wife and hee bee but one person in the Law, yet by such custome hee may deuise by his Testament his tenements to his wife, to haue and to hold to her in Fee simple, or in Fee taile, or for tearme of life, or yeares, for that such deuise taketh no effect, but after the death of the Deuisor. And if a man at diuers times make diuers Testaments, and diuers deuises, &c. yet the last deuise and will made him, shall stand and the other are voyd.

¶ *Home ne poet graunter ne doner ses tenements a sa feme, &c.* This opinion is (a) cleere, for by no conueyance at the Common Law a man could during the couerture either in possession, reuersion or remainder, limit an estate to his wife. But a man may by his deed couenãt with others to stand seised to the vse of his wife, or make a Feoffement or other Conueyance to the vse of his wife, and now the state is executed to such vses by the Statute (b) of 27.H.8. for an vse is but a trust and confidence, which by such a meane might be limited by the husband to the wife. But a man cannot couenant with his wife to stand seised to her vse, because he cannot couenaut with her for the reason that Littleton here yeelds. (a) 4.H.7.

(b) 27.H.8.cap.10.

¶ *Durant le couerture.* That is during the continuance of the Marriage. For to couer in English is Tegere in Latine, and is so called, for that the wife is sub potestate viri, and she is disabled to contract with any without the consent of the husband. (c) Omnia quæ sunt vxoris sunt ipsius viri, non habet vxor potestatẽ sui sed vir. Bract.lib.2.ca.15.

¶ *Vn person en ley.* Vir & vxor sunt quasi vnica persona quia caro vna, & sanguis vnus, res licet sit propria vxoris, vir tamen eius custos, cum sit caput mulieris. Idem, lib.5.tract.5.cap.25.

If Cestey que vse had deuised, that his wife should sell his land, and made her executrix and died, and she tooke another husband, she might sell the land to her husband, for she did it in auter droit, and her husband should be in by the deuisor. 10.H.7.20.

¶ *Per testament.* Testamentum is (as is said before) testatio mentis, and is fauorably to be expounded according to the meaning of the Testator. In contractibus

tractibus benigna in testamentis benignior, in restitutionibus benignissima interpretatio facienda est.

(d) 4.E.2.Tit.Deuise 29.
(e) 44.Ass.p.36. 44.E.3.33 18.E.3.8.
(f) Britton 264.

¶ *A son feme.* **And** Littleton **himselfe yeeldeth the reason,** (d) **because the deuise doth not take effect till after the decease of the deuisor. And in some** (e) **places the custome is generall, that he may deuise any lands, &c. In some** (f) **places Lands only which the Deuisor purchased. In some place that he may deuise any estate, in some places for life only, &c.**

But albeit the last will doth not take effect vntill after his decease, yet if a Feme Couert be seised of Lands in fee, she cannot deuise the same to her husband, because at the making of her will she had no power being sub potestate viri to deuise the same, and the Law intendeth it should be done by coertion of her husband.

2.H.5.8.2.R.3.22.

¶ *Diuers testaments.* **For** Voluntas testatoris est ambulatoria vsque ad mortem (as hath beene said before) **and the latter will doth countermand the first. And it is truly said that the first grant, and the last will is of greatest force.**

¶ *Diuers deuises, &c.* **Hereby** (&c.) **is to bee vnderstood aswell deuises of Chattels reall or personall, as of freehold and inheritance. Also that in one will where there be diuers deuises of one thing the last deuise taketh place.** Cum duo inter se pugnantia reperiuntur in testamento vltimum ratum est.

Sect. 169.

¶ *Ves ses executors poent aliener ou vender ses tenements.* **And that which in Littletons time a man might doe by custome in some particular places he may now doe by the Statutes of** 32.& 34.H.8 **generally.**

*32.H.8.cap.2. 34.H.8.cap.5.

¶ *Les Executors apres le mort lour testator poient vender.* **Here it appeareth, that the Executors hauing but a power, as** Littleton **putteth the case) to sell, they must all ioyne in the sale. Then put the case that one dieth, it is regularly true, that being but a bare authoritie, the suruiuors cannot sell. But if a man deuiseth his land to** A. **for terme of life, and that after his decease, his lands shall be sould by his executors generally, (as** Littleton **here putteth his case) and make three or foure Executors, and during the life of** A. **one of the Executors dieth, and then** A. **dieth, the other two or three Executors may sell, because the land could not be sould before, and the Plurall number of his Executors remaine. But if they had beene named by their names, as by** I.S. I.N. I.D. **and** I. G. **his Executors,**

49.E.3.16. 29.Ass.17. 39.Ass.17. 9.H.6.24. 15.H.7.12.21. 14.H.8.6. 30.H.8.Tit.Deuise Br.31. 2.Eliz. Dier 177.

¶ **Item p̄ tiel custome hõe poyt deuiser per son testament que ses Executors poyent aliener & vender ses tenemẽts que il ad en Fee simple, pur ceux sum̄i de money a distributer p̄ son alme. En ceste cas, coment que le deuisor deuie seisie de les tenements, et les tenements discẽdont a son heire: vncore les executors apres l' mort lour testator, poient vender les tents issint a eux deuises, & ouste l' hr̄, & ent fait feoffm̄t, alienation, & estate p fait, ou sans fait a eux a q̄x l' vend̄ est fait. Et issint pois veier icy vn cas ou hõe poit fair loial estat̄, & vncore il nauoit riens en les**

ALso by such custome a man may deuise by his Testament, that his Executours may alien and sell the Tenements that he hath in Fee simple, for a certaine sum, to distribute for his Soule: In this case though the deuisor die seised of the tenemẽts and the tenements discend vnto his heire, yet the executors after the death of the testator may sell the tenemẽts so deuised thẽ, & put out the heire, and thereof make a feoffement, alienation, and estate by Deed, or without deed, to them to whom the sale is made. And so may yee here see a case where a Man may make a lawfull estate

les Tenements al temps del estate fait. Et le cause est, pur ceo que la custome & vsage ad este tiel. Quia consuetudo ex certa causa rationabili vsitata priuat communem Legem.

& yet hee hath naught in the Tenements at the time of the estate made: and the cause is, for that that the custome & vsage is such. *For a custome vsed vpon a certain reasonable cause deprineth the cõmon law.*

then in that case the suruiuors could not sell the same, because the words of the Testator could not be satisfied; ¶ I my self knew this case adiudged*: A special verdict was found, that A. was seised of certaine lands in fee, and deuised the same in taile, and if the Donee died without issue, that his said land should bee sould by his sonnes in Law, he in truth hauing fiue sons in Law one of his sonnes in Law died in the life of the Donee, and after the Donee died without issue, and then the foure of the sonnes in Law sould the land, and it was adiudged that the sale was good, because they were named generally by his sonnes in Law, and the Lands could not be sould by them all. And the words of the will, in a benigne interpretation are satisfied in the plurall number, albeit they had but a bare authoritie: but if they had bin particularly named, it had beene otherwise. But if a man deuiseth lands to his Executors to bee sould, and maketh two Executors, and the one dieth, yet the suruiuor may sell the land, because as the state, so the trust shall suruiue; and so note the diuersitie betweene a bare trust, and a trust coupled with an interest. In both those cases the Executors may (a) sell part of the land at one time and part at another as they may find purchasers.

* *Hill 24. El. in ex Vincent & Lee in the Kings Bench.*

39. Ass p. 17.
4. Eliz. Dier 210.
23. Eliz. Dier 371.
Pasch. 32. Eliz. Ro. 1307 in Communi Banco. and so resolued in Vincents case.
(a) Lib. 4. fol. 173. in Diggs case.

In Littletons case admit that one Executor had refused to sell, then (as the Law stood when Littleton wrote) it was cleare that the others could not sell, but now by the statute (b) of 21. H.8. it is prouided that where lands are willed to be sold by Executors, that though part of them refuse, yet the residue may sell. And albeit the Letter of the Law extendeth only where Executors haue a power to sell, yet being a beneficiall Law, it is by construction extended where lands are deuised to Executors to be sold. Yet in neither of those cases, albeit one refuse, can the other make sale to him that refused, because he is party and priuie to the last will, and remaine Executor still. Mine aduice to them that make such deuises by will is, to make it as certaine as they can, as that the sale be made by his Executors or the Suruiuors or suruiuor of them, if his meaning be so, or by such or so many of them, as take vpon them the probate of his will, or the like. And it is better to giue them an Authority then an estate, vnlesse his meaning be they should take the profits of his lands in the meane time, and then it is necessary that he deuiseth, that the meane profits till the sale shalbe assets in their hands, for otherwise they shall not be so. But hereof thus much shall suffice.

(b) 21. H.8. cap. 4.

Tr. 27. H.8. in the Common Place. Seriant Bendloes report.

¶ *Et ent faire feoffment.* For albeit the Executors in this case haue no estate or interest in the land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to vest the land in the Feoffee, as it appeareth here, and the Feoffee shalbe in by the Deuisor.

40. E. 3. 16. 38. Ass. 3.
39. Ass. 17. 13. E. 3. deuise. 3.
14. H. 8. 10. 15. H. 7. 12. b

¶ *Per fait ou sauns fait.* And therefore if by the custome a man deuiseth that a Reuersion or any other thing that lyeth in Grant shall bee sold by the Executors, they may sell the same without Deede for the Vendee shall be in by the Deuisor, and not by the Executors as hath beene said.

19. H 6.

¶ *Consuetudo ex certa causa rationabili visitata priuat communem legem.* Quia consuetudo contra rationem introducta potius vsurpatio quam consuetudo appellari debet. Consuetudo præscripta & legittima vincet legem.

¶ *Priuat communem legem.* For no custome or prescription can take away the force of an Act of Parliament, and therefore Littleton materially speaketh here of the Common law.

4. E. 4. 4 11. H. 4. 7.
39. H. 6. 39. 7. H 6. 1. a.
9. H. 6. 56. 8. H. 7. 4.
8. Eliz. Dier. 247.

Sect. 170.

¶ E Tnota q̃ nul custome est allowable, mes q̃ tiel custome q̃ ad este vse

AND note that no custome is to bee allowed, but such custome as hath bin vsed

¶ P *Rescription.* Prescription is a title taking his substance of vse and time allowed by the Law, Præscriptio est titulus ex vsu & tempore substantiam capiens

capiens ab authoritate legis. In the Common Law a preſcription which is perſonal is for the moſt part applied to perſons being made in the name of a certaine perſon and of his Anceſtors or thoſe whoſe eſtate he hath, or in bodies politique, or Corporate, and their predeceſſors, for as a naturall body is ſaid to haue Anceſtors, ſo a body politique or corporate is ſaid to haue predeceſſors. And a cuſtome which is locall is alledged in no perſon, but ſaid within ſome Mannor or other place. As taking one example for many, I.S. ſeiſed of the mãnor of D. in fee preſcribeth thus: That I.S. his Anceſtors, and all thoſe whoſe eſtate hee hath in the ſaid Mannor haue time out of minde of man had and vſed to haue Common of paſture, &c. in ſuch a place, &c. being the land of ſome other, &c. as pertaining to the ſaid Mannor. This properly we call a preſcription. A cuſtome is in this maner. A Copiholder of the Mannor of D. doth pleade, that within the ſame Mannor, there is and hath beene ſuch a cuſtome time out of minde of man vſed, that all the Copiholders of the ſaid Mannor haue had and vſed to haue common of paſture, &c. in ſuch a waſte of the Lord parcell of the ſaid Mannor, &c. where the perſon neither doth or can preſcribe, but alledgeth the cuſtome within the Mannor. But both to cuſtomes and preſcriptions, theſe two things are incident inſeparable, viz. poſſeſſion, or vſage: and Time Poſſeſſion muſt haue three qualities, it muſt be long, continuall, and peaceable, Longa, continua, & pacifica: for it is ſaid, Transferuntur dominia ſine titulo & traditione, per vſu captionem, s. per longam, continuam, & pacificam poſſeſſionem. Longa. i. per ſpatium temporis per legem definitum, of which hereafter ſhall bee ſpoken. Continuam dico ita quod non ſit legittime interrupta.

12.E.4.12. Mar. Br. Preſcr.100.
6.E.6. Dyer 71.14. Ed.3. Bar.277 43.E.3.32.
7.H.6.26. 22.H.6.14.
16.E.2 tit. Preſcript.53.
45.Aſſ.8. 40.Aſſ.27.41.
21.E.4.53.54.

Brak. fo,51,92.

per title de preſcription. s. ỏ temps dont memorie ne curt. Mes diuers opinions ont eſte ỏ temps dont memorie, &c. a ỏ title p preſcription, q̃ eſt tout vn en ley. Car aſcuns ont dit que temps de memorie ſerra dit ỏ temps de limitation en vn briefe ỏ droit, ſcilicet de temps le Roy R. le i. puis le conqueſt, come eſt done per leſtatute de Weſtminſter 1. pur ceo que le briefe de droit eſt le pluis hault briefe en ſa nature que poit eſtre, a per tiel briefe hõe poit recouer ſon droit de la poſſeſſion ſon auncеſtors de pluis auncięt temps que home purroit p aſcun briefe per l'ley, &c. Et entant que il eſt done p le dit eſtatute que en briefe de droit nul ſoit ove a demander de le ſeiſin ſon auncеſtors de pluis longe temps q̃ de temps le Roy R. auantdit, iſſint ceo eſt proue q̃ continuance de poſſeſſion, ou auters cuſtomes, a vſages vſes puis le dit temps, eſt le title de preſcriptiõ, &c. & hoc certum eſt. Et auters ont

by title of preſcription, that is to ſay, from time out of minde. But diuers opinions haue beene of time out of minde, &c. & of title of preſcription, which is all one in the law. For ſome haue ſaid, that time of minde ſhould bee ſaid from time of limitation in a Writ of right, that is to ſay, from the time of King *Richard* the firſt after the Conqueſt, as is giuen by the ſtatute of Weſtminſter the firſt, for that a writ of right is the moſt higheſt Writ in his nature that may be. And by ſuch a writ a man may recouer his right of the poſſeſſion of his Anceſters, of the moſt ancient time that any man may by any writ by the Law, &c. And in ſo much that it is giuen by the ſaid Eſtature, that in a writ of right none ſhall be heard to demãd of the ſeiſin of his anceſtours of longer time, than of the time of King Richard aforeſaid, therefore this is prooued, that continuance of poſſeſſion, or other cuſtomes & vſages vſed after the ſame time is the title

ont dit, q̃ bien & verity eſt, que ſeiſin & continuance puis le dit limitation, eſt vn title de preſcription, come eſt auant dit, & per cauſe auandit. Mes ils ont dit, que il y auxy vn auter title de preſcription, que fuit a la common ley deuant aſcun eſtatute de limitation de briefe, &c. & ceo fuit lou vn cuſtome, ou vn vſage, ou auter choſe ad eſte vſe de temps dont memorie des homes ne Curt a la contrarie. Et ils ont dit, que il eſt proue per l'pleder, lou home voit pleder vn title de preſcription de cuſtome il dirra q̃ tiel cuſtome ad eſte vſe, de tempore cuius contrariũ memoria hominũ non exiſtit, & c̃ eſt autant a dire, quãt tiel matter eſt pleõ, q̃ nul home adonqz en vie ad oye aſcun proofe a l'contrarie, ne auoit aſcun conuſans a l'contrarie. Et entãt que tiel title de preſcription fuit a le common ley, & nient ouſte p aſcun eſtatute, ergo, il demurt come il fuit a le common ley, & le pluis toſt, entant que la dit limitation de briefe ou droit eſt de cy long tẽpz paſſe, Ideo de

of preſcription, and this is certaine. And others haue ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they haue ſaid that there is alſo another title of preſcription that was at the Common law, before any eſtatute of limitation of writs, &c. And that it was where a Cuſtome or vſage, or other thing hath beene vſed, for time whereof minde of man runneth not to the contrary: And they haue ſaid that this is proued by the pleading: where a man will pleade a title of preſcription of cuſtome, hee ſhall ſay that ſuch cuſtome hath beene vſed from time whereof the memory of men runneth not to the contrary, that is as much to ſay, when ſuch a matter is pleaded, that no man then aliue hath heard any proofe of the contrary, nor hath no knowledge to the contrary, and inſomuch that ſuch title of preſcription was at the Common Law, and not put out by an eſtatute, *Ergo*, it abideth as it was at the Cõmon Law, and the rather, inſomuch that the ſaid limitation of a writ of Right, is of ſo long time paſſed, *Ideo quære de hoc*. And

Pacificam dico, quia ſi contentioſa fuerit, idem erit quod prius; ſi contentio fuerit iuſta. Vt ſi verus dominus ſtatim cum intruſor vel diſſeiſor ingreſſus fuerit ſeiſinam, nitatur tales viribus repellere, & expellere, licet id quod inceperit perducere non poſſit ad effectum dum tamen cum defecerit diligens ſit ad impetrandum & proſequendum. Longus vſus nec per vim, nec clam, nec precario, &c. *Idem fo.222.b.*

If a man preſcribeth to haue a Rent, and likewiſe to take a Diſtreſſe for the ſame, it cannot bee auoyded by pleading, that the Rent hath beene alwayes paid by coherſion, albeit it began by wrong. 13.E.4.6.

¶ *Vn title de preſcriptiõ.* Seeing that preſcription maketh a title, it is to be ſeene, firſt to what things a man may make a title by preſcription without Charter. And ſecondly, how it may be loſt by interruption.

For the firſt, as to ſuch Franchiſes and Liberties as cannot be ſeiſed as forfeited, before the cauſe of forfeiture appeare of Record, no man can make a Title by preſcription becauſe that preſcription being but an Vſage in pais, it cannot * extend to ſuch things as cannot bee ſeiſed nor had without matter of Record: as to the goods and chattels of Traitors, felons, felons of themſelues, fugitiues, of thoſe that be put in exigent, Deodands, Conuſance of

21.H.6 Preſcrip.44. 21.E.4.6. 1.H.7.23. 9.H.7.11.20. 7.H.6.45. 6.E.3.32.42. 45.E.3.2. 2.E.4.16.

(*) Flet.li.1.cap.25. Brit. fo.6.& 15. 44.aſſ.p.8 49.E.3.3.Staſ.Pl.Cr.21.51 Lib.5.fo.109.110.Li.9.f.29

of pleas, to make a Corporation, to haue a Sanctuarie, to make a Coroner, &c. to make Conseruators of the peace, &c.

hoc quære. **Et plusors auters customes & vsages ont tiels auncient burghes.**

many other customes and vsages haue such ancient boroughes.

(c) 22.E.3.Coron.241. 9.H.7.11.20. 18.H.6 prescr.45. 11.H.4.10. 21.H.7.33. 9.E.4.12. 39.E.3.35. 46.E.3.16. 11.H.6.25. F.N.B.91. 1.H.7.24. Stanf.pl.Cor.38. 44.E.3.4. 22.E.4.43.44. 3 E.3. Brook prescr.57. 44.Ass.pl. (*)8.H.6.16. (f) 12.E.4.16. 32.H.6.25. 12.Eliz. Dier.288.289.

(c) But to Treasure Trove, Waifes, Estraies, Wrecks of Sea, to hold Pleas, courts of Leets, Hundreds, &c. Infange theefe, Outfange theefe, to haue a Parke, Warren, Royall fishes, as Whales, Sturgions, &c. Faires, Markets, Franke foldage, the keeping of a Goale, Tolle, a Corporation by prescription, and the like, a man may make a Title by vsage and prescription only without any matter of record, (*) Vide Sect.310. where a man shall make a Title to lands by prescription.

But it is to bee obserued (f) that although a man cannot as is aforesaid prescribe in the said Franchise to haue Bona & catalla proditorum, felonum, &c. yet may they and the like be had obliquely or by a meane by prescription; For a County palatine may be claimed by prescription, and by reason thereof to haue Bona & catalla proditorum, felonum, &c.

As to the second, by what meanes a Title by prescription, or Custome may be lost by interruption; It is to be knowne that the Title being once gained by prescription or custome cannot be lost, by interruption of the possession for 10. or 20. yeares, but by interruption in the right, as if a man haue had a Rent or Common by prescription, vnity of possession of as high and perdurable estate is an interruption in the right.

11.E.3, tit. iffue 40.

15.E.3.tit. iudgement 133. 14.E.3.ibid.155.

In a Writ of Meine the Plaintife made his title by prescription, that the Defendant and his Ancestors had acquited the Plaintife and his Ancestors, and the Terre-tenant time out of minde, &c. the Defendant tooke issue, that the Defendant and his Ancestors had not acquited the Plaintife and his Ancestors & the Terre-tenant, and the Jury gaue a speciall verdict, that the Grandfather of the Plaintife was enfeoffed by one Agnes, and that Agnes and her Ancestors were acquited by the Ancestors of the Defendant time out of minde before that time, since which time no acquitall had beene; and it was adiudged and affirmed in a Writ of error, that the Plaintife should recouer his Acquitall, for that there was once a title by prescription vested, which cannot be taken away by a wrongfull Cessor to acquite of late time, and albeit the verdict had found against the letter of the issue, yet for that the substance of the issue was found, viz. a sufficient title by prescription, it was adiudged both by the Court of Common pleas, and in the Writ of error by the court of Kings bench for the Plaintife, which is worthy of obseruation. So a modus decimandi was alledged (*) by prescription time out of minde for tithes of Lambes, and thereupon issue ioyned, and the Jury found that before 20. yeares then last past there was such a prescription, and that for these 20. yeares he had paid tithe Lambe in Specie, and it was obiected first that the issue was found against the Plaintife, for that the prescription was generall for all the time of prescription, and 20. yeares saue thereof. 2. That the party by payment of tythes in Specie had waiued the prescription or custome. But it was adiudged for the Plaintife in the prohibition, for albeit the Modus decimandi had not beene paid by the space of 20. yeares, yet the prescription being found, the substance of the issue is found for the Plaintife. And if a man hath a Common by prescription, and taketh a Lease of the land for 20. yeares, whereby the common is suspended, after the yeares ended, hee may clayme the common generally by prescription, for that the suspension was but to the possession, and not to the right; and the inheritance of the common did alwayes remaine, and when a prescription or custome doth make a title of inheritance (as Littleton speaketh) the partie cannot alter or waiue the same in pais.

(*) *Mich.43.& 44.Eliz. in a prohibition betwne Nowell pl. and Hicks Vicar of Edmonton defendant in the Kings Bench.*

¶ *Temps dont memory, &c. & de title per prescription que est tont vnen ley.* **So as the time prescribed or defined by Law is, time, whereof** (e) there is no memory of man to the contrarie. (e) Omnis quærela, & omnis actio iniuriarum limitata infra certa tempora.

(e) *Bract.fol.314.*

¶ *Temps de limitation.* **Limitation as it is taken in Law is a** certaine time prescribed by Statute, within the which the demandant in the action must prooue himselfe or some of his Ancestors to be seised.

¶ *En briefe de droit.* **In** (f) **ancient time the limitation in a Writ** of Right was from the time of H.1. whereof it was said, à tempore Regis Henrici senioris. **After that by the Statute of** (g) Merton **the limitation was from the time of** H.2. **and by the Statute** (h) **of** W.1. **the limitation was from the time of** R.1. **And this is that limitation that** Littleton **here speaketh of. whereof in the** Mirror **in reproofe of the Law it is thus said,** (i) Abusion est de counter cy longe temps dount nul ne poet testmoigner de vien & de oyer que ne dure my generalment ouster 40. ans.

(f) *Regist.158. Bract. fol.373. 5.Ass.p.2. 34.H.6.40.*
(g) *Stat.de Mert. 20.H.3.ca.8.*
(h) *West.1.an.3.E.1.ca.38. Vide W.2. 13.E.1.ca.46.*
(i) *Mirr.ca.5.§.1.*

Time

Time of limitation is two fold, Firſt, in Writs, and that is by diuers Acts of Parliament. Secondly, To make a title to any Inheritance, and that (as Littleton here ſaith) is by the Common Law.

Limitation of times in Writs are prouided by the ſaid Statute of Merton, and after by the ſaid Statute of W.1. which Littleton here citeth, and which was in force when hee wrote, but is ſince altered by a profitable and neceſſary Statute (k) made Anno 32.H.8. and by that Act, the former limitation of time in a Writ of Right is changed and reduced to three ſcore yeares next before the Teſte of the Writ, and ſo of other actions as by the Statute at large appeareth. But it is to be obſerued, that this Act of 32.H.8. extendeth (l) not to be a Formedon, in the Diſcender, nor to the Seruices of Eſcuage, Homage, and Fealtie, for a man may liue aboue the time limited by the Act, neither doth it extend to any other ſeruice which by common poſſibilitie may not happen or become due within ſixtie yeares, as to couer the hall of the Lord, or to attend on his Lord when he goeth to warre or the like, nor where the ſeiſin is not trauerſable or iſſuable, neither doth it extend to a Rent created by Deed, nor to a Rent reſerued vpon any particular eſtate, for (m) in the one caſe the Deed is the title, and in the other the reſeruation, nor to any Writ of Right of Aduowſon, Quare impedit, or Aſſiſe of Darreine preſentment (for there was a parſon of one of my Churches that had beene Incumbent there aboue ſixtie yeares, and died but lately) or any Writ of Right of ward, or rauiſhment of Ward, &c. but they are left as they were before the Statute of 32.H.8. But hereof thus much for the better vnderſtanding of Littleton ſhall ſuffice.

Glanuil.lib 13.ca. 3. & 34. Mirror.ca. 5 §.4. Flet.a.lib.2.ca.38. & li.4.ca 5 Britton. fol.79.82. Braſton.lib.2. fol 52. & fol. 179.253.373.

(k) 32.H.8.ca.2. See the ſecond part of the Inſtitutes. Merton.ca.8.

(l) Mich.10 & 11.Eliz. Dier.278. Fitzwilliams caſe.

¶ *De temps le Roy, R.*1. **And that was intended from the firſt day** of his raigne, for (from the time) being indefinitely doth include the whole time of his Raigne, which is to be obſerued.

Lib.4. fol.10. & 11. Bewis caſe.

(m) Lib.8 fol.65. Sir Williams Foſters caſe.

¶ *Brieſe de droit*, breue de recto, **a Writ of Right ſo called, for that** the words in the Writ of Right are, Quod ſine dilatione plenum rectum teneas.

Vide 34.H.6.36

¶ *Title de preſcription al common ley, &c. de temps dont memorie des homes ne curge al contrarie.* Docere oportet longum tempus, & longum vſum illum, viz. qui excedit memoriam hominum, tale enim tempus ſufficit pro iure.

Braſſ.lib.4. fol.230. Flet.lib.4.cap.24.

¶ *Aſcun proofe al contrarie.* **For if there bee any ſufficient proofe** of Record or Writing to the contrary, albeit it exceed the memory, or proper knowledge of any man liuing, yet is it within the memory of man: for memorie or knowledge is two fold. Firſt, By knowledge by proofe, as by Record or ſufficient matter of writing. Secondly, By his owne proper knowledge. A Record or ſufficient matter in writing are good memorials for Litera ſcripta manet. And therefore it is ſaid, when we will by any Record or writing commit the memory of any thing to Poſteritie, it is ſaid tradere memoriæ. And this is the reaſon that regularly a man cannot preſcribe or alleage a Cuſtome againſt a Statute, becauſe that is matter of Record, and is the higheſt proofe and matter of Record in Law. But yet a man may preſcribe againſt an Act of Parliament when his Preſcription or Cuſtome is ſaued or preſerued by another Act of Parliament.

28.Aſſ.25.38.Aſſ.18. 45.E.3.26.5.H.7.10. 8.H.7.7. 11.H.7.21. Dier 23.Eliz.273.

There is alſo a diuerſitie betweene an Act of Parliament in the negatiue and in the affirmatiue, for an affirmatiue Act doth not take away a cuſtome as the Statutes of Wills of 32. and 34.H 8. doe not take away a Cuſtome to deuiſe Lands, as it hath beene often adiudged. Moreouer, there is a diuerſitie betweene Statutes that be in the negatiue, for if a Statute in the negatiue be declaratiue of the ancient Law, that is in affirmance of the Common Law, there as well as a man may preſcribe or alledge a cuſtome againſt the Common Law, ſo a man may doe againſt ſuch a Statute, for as our Author ſaith, Conſuetudo, &c. priuat communem legem. As the Statute of Magna Charta prouideth, that no Leet ſhall be holden but twice in the yeare, yet a man may preſcribe to hold it oftener, and at other times, for that the Statute (n) was but in affirmance of the Common Law.

Magna Charta cap.35.

(n) 6.H.7.2.8.H.4.34. 12.H.7.18. 31.H.6.leet.11. 18.H.6.13.

So the Statute (o) of 34.E.1. prouideth that none ſhall cut downe any trees of his owne within a Foreſt without the view of the Forreſter: but inaſmuch as this Act is in affirmance of the Common Law, a man may preſcribe to cut downe his woods within a Foreſt without the view of the Forreſter. And ſo was it adiudged in 16.Eliz. in the Exchequer by Sir Edward Sanders Chiefe Baron, and other the Barons of the Exchequer, as Sir Iohn Popham Chiefe Iuſtice of the Kings Bench reported to me.

(o) 34.E.1.tit. foreſt. Raſt. 1.E.3.cap.2.

In the Eire of the Foreſt of Pickering before Willoughby, Hungerford and Hanburie, Iuſtices Itinerants there, Anno 8.E.3. I reade (p) a clayme made by Henry de Percy, Lord of the Manor of Semor within the ſaid Foreſt, the Forreſters, Verderours, and Regarders found his clayme to be true, viz. Quod prædictus Henricus de Percy, & omnes anteceſſores ſui tenentes

(p) Itin. Pickering. anno 8. E.3.Rot.38.

tes manerium prædictum à tempore quo non extat memoria & sine interruptione aliquali tenuerunt prædictum manerium cum pertinentijs extra regardum Forestæ, & habuerunt Woodwardum portantem arcum & sagittas ad præsentandum præsentanda de venatione tantum, &c. & habuerunt in boscis suis de Semere forgeas, & mineras, & amputârunt, dederunt, & vendiderunt boscum suum infra manerium prædictum sine visu forestariorum pro voluntate sua, & fugarunt, & ceperunt Vulpes, Lepores, Capriolos, &c. sicut idem Henricus Percy superius clamat. Which clayme by prescription, and found as is aforesaid, the Justices doubted only of two points. The first, forasmuch as the said Mannor was within the limits of the Forest, it should not only be Contra assisam Forestæ, for his Woodward to beare Bow and Arrowes, where by Law he ought to beare but an Hatchet and no Bow nor Arrowes within the forest, but also de facili cedere possit in destructionem ferarum, &c. and therefore doubted whether it might be claymed by prescription. Their second doubt was concerning fugationem, & captionem Capriolorum in boscis suis prædictis, eo quod est bestia venationis Forestæ, & transgressores inde conuicti finem facerent vt pro transgressione venationis, and for that difficultie, the clayme was adiourned into the Kings Bench. But of the other parts of the Prescription no doubt at all was made: and the like had beene allowed in the same Eire, as in the case of Thomas Lord Wake of Lydell, and of Gilbert of Acton, in the same Eire, Rot. 37. and of others.

¶ *Il est proue per le pleader.* Note one of the best arguments or proofes in Law is drawne from the right entries or course of pleading, for the Law it selfe speaketh by good pleading, and therefore Littleton here saith, It is proued by the pleading, &c. as if pleading were ipsius legis viua vox.

Entant que tiel title per prescription fuit al comon ley &c. Note all the prescriptions that were limited from a certaine time were by Act of Parliament, as from the time of H.1. which was the first time of limitation set downe by any Act of Parliament, and so from the Raigne of R.1. &c. But this Prescription of time out of memory of man was (as Littleton here saith) at the Common Law, and limited to no time. Also here is implyed a maxime of the Law, viz. That whatsoeuer was at the Common Law, and is not ousted or taken away by any Statute remaynseth still.

¶ *Common ley.* The Law of England is deuided, as hath beene said before into three parts; the Common Law, which is the most generall and antient Law of the realme; of part whereof, Littleton wrote, 2. Statutes or Acts of Parliament; and 3. particuler Customes (whereof Littleton also maketh some mention) I say particuler, for if it be the generall Customs of the realme, it is part of the Common Law.

The Common Law hath no controller in any part of it, but the high Court of Parliament, and if it be not abrogated or altered by Parliament, it remaynes still as (Littleton here saith) The Common Law appeareth in the Statute of Magna Charta and other ancient Statutes (which for the most part are affirmations of the Common Law) in the originall writs in iudiciall Records, and in our Bookes of termes and yeares, Acts of Parliament appeare in the Rolls of Parliament, and for the most part are in print. Particular customes are to be proued.

Section 171.

¶ *Ville.* Villa quasi vehilla quod in eam conuehantur fructus. And it is called Vicus, because it is prope viam. Villa est ex pluribus mancionibus vicinata & collata ex pluribus vicinis. If a Towne be decayed so as no houses remayne, yet it is a Towne in Law. And so if a Borough bee decayed, yet shall it send Burgesses to the Parliament, as old Salisbury and others doe. It cannot be a Towne in Law, vnlesse it hath, or in time past hath had a Church and celebration of Diuine Seruice, Sacraments and Burials: what alteration hath beene made in Townes, hereof what a great Lawyer saith, In Anglia Villula tam parua inueniri non poterit, in qua non est Miles, Armiger, vel Paterfamilias, &c. magnis ditatus possessionibus, nec non liberi tenentes alij & valecti plurimis suis patrimonijs sufficientes, &c. And it appeareth by Littleton, that a Towne is the genus, and a Borough is the species, for he saith that euery Borough is a Towne, but euery Towne is not a Borough. Et sub appellatione Villarum continenter Burgi & Ciuitates.

¶ Item, chescun Burgh est vn ville, mes nēy e conuerso. Plus terra dit de custome en le tenure de villenage.

Also euery Borough is a Towne but not *è conuerso*: more shall bee said of custome in the tenure of villenage.

Vide Linwood verbo vicus. Bracton. lib. 5. fol. 434. & lib. 4. fol. 211. Fortescue cap. 29. 7. E. 6. fines leuie de terre. Br. 91.

34. E. 1. quare Imp. 187.

Fortescue cap. 29.

Fortescue cap. 24.

Ber-

Berewica, or Berewit in Domesday signifieth a Towne, Hæ Berewicæ pertinent ad Berchley. (Et sic recitat plus quam viginti villas.)

Domesday. Glanv.

There be in England and Wales eight thousand, eight hundred and three Townes, or there abouts.

See more De villis, parochijs & Hamlettis in the ancient Authors of the Law, and plentifully in our other bookes. But let vs now heare what Littleton saith,

Bract. vbi sup. Flet. l. 4. c. 15. & lib. 6. ca. 49. Bat. fo 124. & 274. &c.

Chap. 11. Villenage. Sect. 172.

CTenure en villenage est plus propermẽt quant vn villein tient de son Sñr a que il est villein, certaine terres ou tenemẽts solonqz le custome del manor, ou autrement a la volunt son Seignior, & de faire a son seignior villein service: come de porter & de carier le fime le Sñr hors del Citie ou del Manor son Seignior ielques a le terr son Seignior, en gisant ceo sur le terre, & huiusmodi. Et aleuns franke homes teignont lour tenements solonqz le custome del certaine manors per tiels services. Et lour tenure auxy est appell tenure en villenage, & vncore ils ne sont pas villeines: Car nul fre tenus en villenage, ou villeine terre, ne aleun custome surdant de la fre, ne vnques ferra

TEnure in villenage is most properly when a Villeine holdeth of his Lord, to whom he is a villeine, certaine lands or tenements according to the custome of the Mannor, or otherwise at the will of his Lord, and to doe to his Lord villeine seruice: As to carry and recarry the dunge of his Lord out of the Citie, or out of his Lords Mannor, vnto the land of his Lord, and to spread the same vpon the land, and such like. And some free men hold their tenements according to the custome of certaine Manors by such seruices. And their tenure also is called Tenure in villenage, and yet they are not villeines. For no land holden in villenage or villein land, nor any custome arising out of the land, shall euer make a free man villeine, but a

Lib Rub. 76. & 77. Glanv. li. 5. ca. 1. & 2. &c. Vide Bract. li. 1. ca. 6, &c. Brit. fo. 77. & 67. 82. 87. 98. 125. 126. 147. Flet. li. 1 c. 3. Flet. li. 2. cap. 44. Idem lib 4. ca. 11, & 12. Mir. ca. 2. §. 18. Oskam.

Tenure en Villenage. Villeine is the French word Vilaine, and that A villa quia villæ adscriptus est, for they which are now called Villani of ancient times were called Ascriptitij, and in the Common Law hee is called Nativus, quia pro maiore parte natus est seruus, and this is hee which the Ciuilians call servus. (a) Theyn in the Saxon tongue is Liber, and Then servus. Theme (sometime written Theame corruptly) is an old Saxon word, and signifieth Potestatem habendi in nativos sive villanos cum eorum sequelis, terris, bonis & catallis. But Teame sometime corruptly written Theam is of another signification, for it is also an old Saxon word, (b) and signifieth where a man cannot produce his Warrant of that which he bought according to his Voucher.

(a) *Fleta. li. 1. ca. 24.*

(b) *Vide Lamb. inter Leges Sancti Edw. fo. 132. nu. 25.*

Villenage. Villenagium, (as in like cases hath beene said when the termination is in Age) is the seruice of a bondman, And yet a free man may doe the seruice of him that is bound. And therefore a tenure in Villenage is twofold, one where the person of the Tenant is bound, and the tenure seruile, the other where the person is free, and the tenure seruile. (c) Serva terra liberos de sanguine existentes, villanos facere non potest. And therefore it is said (d) Est enim ratio & regula generalis in istis duobus casibus quod liber homo nihil libertatis propter personam

(c) *Hil. 29. E. 1. coram Rege Eber. in Thesaur.*

(d) *Bract. li. 4. fo. 170.*

personam suam liberam confert villenagio, nec liberum tenementum è contrario mutat statum aut conditionem villani. And againe, (e) Villenagium vel seruitium nihil detrahit libertati, habita tamen distinctione vtrum tales sint villani, & tenuerunt in villano socagio de dominico Domini Regis. And againe, (f) Tenementum non mutat statum liberi non magis quam serui, poterit enim liber homo tenere purum villinagium faciendo quicquid ad villanum pertinebit, & nihilominus liber erit, cum hoc faciat ratione villenagii, & non ratione personæ suæ, & ideo poterit quãdo voluerit villenagium deserere, & liber discedere nisi illaqueatus sit per vxorem natiuam ad hoc faciendũ ad quam ingressus fuit in villenagium, & quæ præstare poterit impedimentum, &c. And againe, (g) Purum villenagium est a quo præstatur seruitium incertum & indeterminatum vbi scire non poterit vespere, qua'e seruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit. And another saith to the same intent, Ceux ne scauoient le vespere de quoy ils seruiera la Matyn. (h) Fuerunt in Conquestu liberi homines qui libere tenuerunt tenementa sua per libera seruicia, vel per liberas consuetudines, & cum per potentiores eiecti essent postmodum reuersi receperunt eadem tenementa sua tenenda in Villenagio, faciendo inde opera seruilia sedenta & nominata, &c. & nihilominus liberi, quia licet faciunt opera seruilia, cum non faciunt a ratione personarum, sed ratione tenementorum, &c.

(e) *Idem lib.1.ca.6. Brit.c.31 & 66. Flet li.1.ca.3.*

(f) *Bract.fo.26. 43.B.3.5.a.c.*

(g) *Bract.li.4.fo.208. Brit.ca.31.*

(h) *Bract.li.1.fo.7.*

franke home villein. Mes vn villein puit faire franke terre deste villein terre a son Sñr. Sicome lou vn villeine purchase terre en fee simpl, ou en fee taile, le Seignior del villein poet enter en la terre, & ouste le villeine & ses heires a touts iours, & puis le Seigniour (sil voloit) puit lesser mesme la terre, a le Villein a tener en Villenage.

Villeine may make free land to be Villein land to his Lord. As where a Villeine purchase land in fee simple, or in fee taile, the Lord of the Villeine may enter into the land, and out the Villeine and his heires for euer: And after, the Lord (if he will) may let the same land to the Villein, to hold in Villenage.

How Villenage or seruitude began, and for what cause, it is said, (i) Ab homine, & pro vitio introducta est servitus, sed libertas à Deo hominis est indita naturæ, quare ipsa ab homine sublata semper redire gliscit, vt facit omne, quod libertate naturali priuatur. And another saith, (k) That the condition of Villeines from freedome vnto bondage, of antient time grew by constitutions of Nations, (l) Fiunt etiam serui liberi homines captiuitate de iure gentium; And not by the Law of Nature, as from the time of Noahs Floud forward, in which time all things were common to all, and free to all men alike, and liued vnder the Law Naturall, and by multiplication of people, and making proper and priuate those things that were common, arose battells. And then it was ordained by constitution of Nations, That none should kill another, but that he that was taken in battell, should remaine bond to his taker for euer, and to doe with him, and all that should come of him, his will and pleasure, as with his beast, or any other Chattell, to giue, or to sell, or to kill: And after it was ordained for the crueltie of soure Lords, That none should kill them, and that the life and members of them, as well as of freemen, were in the hands and protection of Kings, and that he that killed his Villeine, should haue the same iudgement as if he had killed a Freeman. Thereupon they were called, Serui, quia seruabantur a Dominis & non occidebantur, & non a seruiendo. He is called, Nativus a nascendo, quia plerumque natus est servus: And he is called Villanus, for that he doth his Villeine seruice in Villis.

(i) *Forteſc.ca.42.*

(k) *Brit.ca.31.*
(l) *Bract.li 1.c.5.6. Flet.li.1.ca.3.& ca 5. Mir.ca.2 §.18.*

Est autem libertas naturalis facultas eius quod cuique facere libet nisi quod de iure, aut vi prohibetur. Seruitus est constitutio de iure gentium qua quis Domino alieno contra naturam subjicitur. And againe, (m) Et tout soyt que touts creatures duissont este franks solonque le Ley de nature, per constitution nequidant, & fait de homes sont auters creatures enseruies sicome est dit beasts en Parkes, pissons en seruors, & oyseaux en cages.

Bracton Lib.1.cap.6. Britton cap.31. & vbi supra. Fleta Lib.1.cap 2.& 3.
(m) *Mirror cap.2.§.18.*

(n) This is assured, That bondage or seruitude was first inflicted for dishonouring of parents: for Cham the father of Canaan (of whom issued the Canaanites) seeing the nakednes of his father Noah, and shewing it in derision to his brethren, was therefore punished in his sonne Canaan, with bondage. And herewith agreeth the Diuine, Ante Vini inuentionem incussa libertas: non esset hodie seruitus si ebrietas non fuisset.

(n) *Mirror cap.2.§.18. Geneſis 9.verſ.10.11. &c. Ambroſe.*

¶ *Hors del citie ou del Mannor, &c.* This is false printed, for the original

originall is, Hors del ſcite del Manner, and ſo would it be amended at the Impreſſions of the Bookes hereafter.

¶ *Et aſcuns frank homes teignont, &c.* This is apparant enough, eſpecially vpon that which hath beene ſaid. *Mirror ca.2.§.18. Acc.*

¶ *Ou vn Villeine purchaſe terre en fee ſimple.* Yet the Villeine may purchaſe ſome kind of Inheritances in fee ſimple, which the Lord of the Villeine cannot haue. As if a Villeine purchaſe a Common ſauns nomber, the Lord ſhall not haue it, for the Lord may ſurcharge the ſame, which ſhould be a preiudice to the Terre-tenant, and the ſame law of a Corodie in certaine granted to a Villeine, and ſuch like Inheritances. And therefore Littleton materially ſayd, Purchaſe terre: when the Villeine hath an eſtate of any thing certaine, the Lord ſhall haue it as a rent granted to the Villeine, Commons certaine, Eſtouers certaine, and ſuch like. (o) But that which lieth in action as a Warrantie made to the Villeine, his heires, and Aſſignes, the Lord ſhall not take aduantage of by Voucher, becauſe it is in lieu of an action, neither ſhall the Lord take aduantage of any Obligation or Couenant, or other thing in Action made to the Villeine, becauſe they lie in priuitie, and cannot be transferred to others. *Mirror cap.2. §.18.* *22.Aſſ.p.37.* (o) *Doctor & Stud.cap.43.*

(p) If a man be Leſſee of a Villeine for life, for yeares, or at will, and the Villeine purchaſeth lands in fee, if the Leſſee entreth into the Lands, he ſhall hold the lands as a perquiſite to him and his heires for euer. But if a Biſhop hath a Villeine in the right of his Biſhoprycke, and he purchaſeth lands, and the Biſhop entreth, the Biſhop ſhall haue this Perquiſit to him and his ſucceſſors, and not to him and his heires, for the Law reſpecteth the qualitie, and not the quantitie of his eſtate. So if Executors haue a Villeine for yeares, and the Villeine purchaſe lands in fee, and the Executors enter, they ſhall haue a fee ſimple, but it ſhall be aſſets. (p) *L.5.E.4.61.18.E.3.29. 21.H.6.37. Brac.lib.Vil.70.*

¶ *Fee taile.* By this it is apparant, that if lands be giuen to a Villeine, and to the heires of his bodie, the Lord may enter and put out the Villeine and the heires of his bodie, for, Quicquid acquiritur ſeruo acquiritur Domino. And in this caſe the Lord gaines a fee ſimple determinable vpon the dying of the Villeine, without heire of his bodie, and the abſolute fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after infranchiſe the Donee, and after the Donee hath iſſue, yet that iſſue ſhall neuer haue remedie either by Formedon or entrie, to recouer this Land, by force of the Statute of Donis Conditionalibus, for that Statute giueth remedie to the iſſues of the Donee that haue capacitie and power to take and retaine ſuch a gift. And the title of the Lord remaines as it did at the Common Law, for the Statute reſtraineth acts done onely by the Tenant in taile. And ſo it is, if lands be giuen to an alien, and to the heires of his bodie, vpon office found, the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, the King ſhall detaine the land againſt the Iſſue. *15.E.4.9.b. Pl.Com. 555. in Walſingham's caſe.*

Section 173.

¶ ET nota, ſi feoffment ſoit fait a certaine perſon ou perſon ſen fee al vſe dun villeine, ou ſi vn villeine, oue auters perſons ſoient enfeoffes al vſe le villeine, quel eſtate que le villeine ad en le vſe, en fee Taile, pur terme de vie, ou dans, le Seignior del villeine poit enter en touts ceux terres & tenements, ſicome le villein vſt eſte ſole ſeiſie del demeſn. Et ceſt per Leſtatute de Anno 19.H.7.cap. 15.

¶ AND note, if a feoffement be made to a certaine perſon or perſons in fee, to the vſe of a Villeine; or if a Villeine with other perſons, be infeoffed to the vſe of the Villein, what eſtate ſoeuer that the villeine hath in the vſe, in fee taile, for terme of life or yeares, the Lord of the Villein may enter into all thoſe lands and tenements, as if the Villeine had been ſole ſeiſed of the Demeſne. And this is giuen by the ſtatute of *Anno 19.H.7.ca.15.*

¶ This is an addition to Littleton, and the Statute of 19 H.7.ca.15. therein mentioned, for the cauſe that hath beene aforeſaid, hath loſt his force.

Sect. 174.

¶ A *Paier vn fine pur le mariage, &c.* (q) And this villeine and ſeruile tenure is called in old bookes Marchetum or merchet Marchetum verò pro filia dare non competit libero homini inter alia propter liberi ſanguinis priuilegium, &c. And this is true De Communi jure, ſed modus & conventio vincunt legem. And as Littleton here ſaith, it is the folly of a ſuch a free man to take ſuch Mannors, Lands or Tenements to hold of the Lord by ſuch bondage. And yet this doth not make ſuch a free man a villeine, (r) Quia hujuſmodi præſtationes fiunt ratione tenementi & non ratione perſonæ in donatione comprehenſæ & reſervat', non enim vnum & idem eſt, ſed longe aliud, tenere libere, & per liberū ſervitium, &c. for the ſignification of this word, vide Sect. 194 & 74 & 441.

(q) 15. E. 3. tit. aid. 33. Bracton, lib 2. fo. 26. Mirror, cap. 2. §. 18.

See more of this after in this chapter, Sect. 194.

(r) Fleta, lib. 2. cap. 13. Mirror cap. 2. §. 18.

¶ Mes ſi aſcun franke home voile prender aſcun fres ou tenements a tener de ſon Sñr p tiel villein ſeruice, ſ. a payer vn fine a luy pur le mariage de ſes fits ou files, donq̃ il paiera tiel fine pur le mariage, q̃ nient obſtant que il eſt le folie de tiel frank home de prender en tiel fozm̃ terres ou tenements a tener de la ſeignioz per tiel bondage, vncoze ceo ne fait le franke home villeine.

BVt if a free man will take any lands or tenements to hold of his Lord by ſuch villeine ſeruice, *viz.* to pay a fine to him for the marriage of his ſonnes or daughters, then hee ſhall pay ſuch fine for the mariage, yet notwithſtanding though it be the folly of ſuch free man to take in ſuch forme lands or tenements to hold of the Lord by ſuch bondage, yet this maketh not the free man a villeine.

Sect. 175.

¶ C *Heſcun villeine ou eſt villeine per title de preſcription, &c.* Euery villeine is either by preſcription or confeſſion Servi autem naſcuntur aut fiunt. By preſcription, either regardant to a Mannor, &c. or in groſſe. In groſſe either by preſcription or by granting away a villeine that is regardant or by confeſſion. (f) Fit etiam ſervus liber homo per confeſſionem in curia Regis fact'.

Lib. Rub. cap. 76. 77. Bracton, lib. 1. cap. 6. Bract. fol. 77.

(f) Bract. lib. 1. cap. 6. Fleta lib. 1. cap. 3. 8. Aſſ. P. 13. 11. Aſſ. 12. 24. Aſſ. 1. 73. Aſſ. 1. 17. E. 3. 78. 79. 27. E. 3. 89. 18. E. 4. 25. 27. H. 8. 7. b. Le ſtatute de 17. E. 3. ca. 17.

¶ Item cheſcun villeine, ou eſt vn villeine p title de preſcription, ceſtaſcauoir, q̃ il & ſes auncеſtoꝛs ont eſte villeines ô temps dont memoꝛie ne curt, ou il eſt villein per ſon confeſſion demeſne en Court de Recoꝛd.

ALſo euery villeine is either a villeine by title of preſcription, to wit, that hee and his Anceſtors haue beene villeines time out of minde of man, or hee is a villeine by his owne confeſſion in a Court of Record.

(t) 17. E. 3. 23. 11. H. 4. 26. 37. H. 6. 21. Diver. Mich. 7. & 8. Eliz. 243. Pl. Com. 79. & c.

¶ *En court de Recoꝛd.* Recoꝛd is deriued of the Latyn woꝛd Recordor, that is to keepe in minde as the Poet ſaith, Si rite audita recordor. And therefore a Recoꝛd or Inrolment is a memoꝛiall or monument of ſo high a nature, (t) as it importeth in it ſelfe ſuch an abſolute verity, as if it be pleaded, that there is no ſuch Recoꝛd, it ſhall not receiue any tryall by Witneſſe, Jury or otherwiſe, but only by it ſelfe, (u) And euery Court of Recoꝛd is the Kings Court, albeit another may haue the profit, wherein if the Judges doe err, a Writ of erroꝛ doth lye. (w) But the County Court, the Hundred court, the court Baron, and ſuch like are no courts of Recoꝛd, and therefoꝛe the proceedings therein may be denied, and tryed by Jury, and vpon their iudgements a Writ of erroꝛ lyeth not, but a Writ of falſe iudgement

(u) Glanvil. lib 9. cap. 8. Bracton, lib. 3. fo. 156. Britton, fo. 121.

(w) Lin. 6. fo. 11. & 12. in Gentlemans caſe.

ment for that they are no Courts of record, because they cannot hold plea of debt or trespasse if the debt or damages doe amount to 40. shillings, or of any trespasse Vi & armis.
Monumenta quæ nos recorda vocamus sunt veritatis & vetustatis vestigia.

Sect. 176.

¶ Mes si frank home ad diuers issues, & puis il confesse luy mesme destre villein a vn auter en Court de Record, vncore les issues que il auera deuant le confes. sont franks, mes les issues que il auera apres le confession serront villeines.

BVt if a free man hath diuers issues, and afterwards he confesseth himselfe to be a villaine to another in a Court of Record, yet those issues which he hath before the confession are free, but the issues which hee shall haue after the confession shall be villaines.

This is so euident as it needeth no explication.

Section 177.

¶ Item, si le villein purchase terre & alien la terre a vn auter deuant que le seignior enter, donques le Seignior ne poit enter, car il serra adiudge son follie q̄ il nentra pas quant la terre fuit en le maine le villein. Et issint est dez biens si le villein achate biens, & eux vend ou done a vn auter deuant que le Seignior seisist les biens, adonques le seignior ne poit eux seiser. Mes si le seignior deuant ascū tiel vender ou done, viēt deins la ville la lou tielx biens sont, & la ouertment enter les vicines claima les biens et seisist parcel

ALso if a Villaine purchase land and alien the land to another, before that the Lord enter, then the Lord cannot enter, for it shall bee adiudged his folly, that hee did not enter when the Land was in the hands of the Villaine. And so it is of goods: If the Villaine buy goods & sell or giue them to another, before the LORD seiseth them, then the Lord may not seise the same: but if the Lord before any such sale or gift, commeth into the Towne where such goods be, and there openly amongst the neighbors clayme the goods, and seise part of the goods in the name of seisin

¶ In this case before the Lord doth enter, hee hath neither Ius in renec ius ad rem, but only a possibilitis of an estate, which estate hee must gaine by his entrie, and therefore if the Villaine doth by way of preuention alien before the Lord doth enter the Lord is barred of the possibilitis which he had to the Land for euer (a) Si autem seruus vēdiderit feodum quod sibi & hæredibus perquisiuerit antequam Dominus seisinam inde ceperit valet donatio & Dominus sibi ipsi imputet, quod tantum expectauit. But (b) if the Villaine of the King purchaseth Land and alieneth before the King (vpon an office found for him) doth enter, yet the King after office found shall haue the Land, Quia nullum tempus occurrit Regi, as Littleton himselfe saith in the next Section. And yet after office found the King shall not haue the meane profits because the title is by the seisure.

(a) *Fleta lib.3.ca.13. Bruton. fol.98.a. 19.E.2.Dower 171.*

(b) *35.F.3. tit. Villenage 22. 9.H.6.21. per Babington. 12.H.7.12.*

¶ *Purchase terre.* The like Law is of Seigniories, Aduowsons, Reuersions, Remaynders, Rents, Commons certaine, and such like certaine Inheritances, wherein the Villaine hath

hath any eſtate or intereſt. If the Villaine purchaſe Land either in Fee ſimple, Fee taile, or for life, if the Villaine doth alien before the Lord doth enter, he doth preuent the Lord. But yet the iſſue of the Villaine ſhall recouer the Land intayled in a Formedon, and then the Lord may enter.

¶ *Alien la terre.* Alien commeth of the Verbe Alienare, id eſt, alienum facere vel ex noſtro dominio in alienum transferre, ſiue rem aliquam in Dominium alterius transferre. If a freeman hath iſſue and afterward by confeſſion becommeth bond, and purchaſe Lands in fee, and before the Lord enter hee dieth ſeiſed, and the Land diſcends to his iſſue which is free, in this caſe the Lord ſhall not enter vpon the heire, and yet this is a diſcent and no alienation. The like Law it is if the land ſo purchaſed by the Villaine doth eſcheate to the Lord of the Fee before any entry made by the Lord of the Villaine, ſo as the act of the Law that is the diſcent or eſcheat may aſwell preuent the Lord of his entrie, as the act of the partie by alienation.

If a Villaine be diſſeiſed before the Lord doth enter, the Lord may enter into the Land in the name of the Villaine, and thereby gaine the Inheritance of the land, but if there bee a diſcent caſt, ſo as the entrie of the Villaine be taken away, then the Villaine muſt recontinue the eſtate of the land by iudgement and execution, before the Lord of the Villaine can enter, and this word alien doth not only extend to alienations of land in deed, but alſo to alienations in law, as if the Villaine purchaſe land and dieth without heire, and the land eſcheate, or if there be recouery againſt the Villaine in a Ceſſauit or the like.

¶ *Et iſſint eſt des biens, &c. Biens*, bona **des biens en noſme de ſeiſin de touts les biens q̄ le villeine ad ou auer poit &c. Ceo eſt dit bon ſeiſin en ley, et le occupation que le villeine ad apres tiel claime en ꝑz biens, ſerra pris en le droit le Seignior.** of all the goods which the Villaine hath or may haue, &c. this is a good ſeiſin in law, and the occupation which the Villaine hath after ſuch clayme in the goods ſhall bee taken in the right of the Lord.

includes all chattels aſwell reall as perſonall. Chattels is a French word, and ſignifieth goods, which by a word of art is call Catalla. Now Goods or Chattels are either perſonall or reall, perſonall as horſe and other beaſts, houſhold ſtuffe, Bowes, weapons, and ſuch like, called perſonall because for the moſt part they belong to the perſon of a man, or elſe for that they are to be recouered by perſonall actions. Reall, because they concerne the realitie, as tearmes for yeares of Lands or Tenements, wardſhips, the intereſt of tenant by Statute Staple, by Statute Merchant, by Elegit and ſuch like.

Bona diuiduntur in mobilia & immobilia, mobilia rurſum diuiduntur in ea quæ ſe mouent, & quæ ab aliis mouentur: but by the Common Law, no eſtate of Inheritance or Free-hold is comprehended vnder theſe words bona or catalla. And it is to be obſerued, that as the title of the Lord to his villains lands beginneth by his entrie, ſo his title to the goods beginneth by the ſeiſure of them. And here againe it is to bee obſerued, that where our Author in this branch concerning goods vſeth theſe words (ſell or giue) that the ſame extendeth aſwell to gifts in Law as gifts in deed. And therefore if a neife hath goods, and taketh Baron by this gift in Law by force of the Marriage, the Lord is barred. And ſo it is if a Villaine make his Executors and dieth, by this gift in law the Lord is barred as ſhall be ſaid hereafter.

3.H.4.15. 46.E.3.barre 217 Doct. & Stud. cap. 43. fol. 135. 22.E 3.6. Baldwyn Freuils caſe.

¶ *Et claime les biens & ſeiſiſt parcel des biens.* For a claime only of the goods of the Villaine is not ſufficient in Law, but he muſt ſeize ſome part in the name of all the reſidue, as here it appeareth, or that the goods be within the view of the Lord, for the claime and his view amount to a ſeizure, as the clayme of a ward being preſent by word is a ſufficient ſeiſure, albeit the Gardeine layeth no hands of him. See hereafter Sect. 221. And ſo note a diuerſitie betweene a clayme of Lands or Tenemens, and goods. (c) In an Action of treſpaſſe or detinue brought by the Villaine, a releaſe made to the defendant by the Lord is a good barre, for that amount to a ſeiſure and grant. If the Villaine doth buy goods and make his Executors and dieth before the Lord doth ſeize them, the Executors ſhall detaine them againſt the Lord of the Villaine.

(c) 18.H.6.23.b. per Acough. 3.H.4.16. 46.E.3.barre 217.

¶ *Ad ou auer poet, &c.* Here (&c.) doth imply an excellent point of learning, for that ſuch a claime doth not only veſt the goods which the Villeine then hath, but alſo which he after that ſhall acquire and get. But otherwiſe it is of lands of freehold or Inheritance, for there ſuch a generall entrie or clayme extends only to the lands the Villeine hath at

at that time, and not to any other which he shall purchase after, as by our Author in this Section may fully be collected.

Sect. 178.

¶ Mes si le Roy ad vn villein que purchase terre, & alien deuant que le roy entra, vncore le roy poit enter en que maines que la terre deuiendra. Ou si le villein achata biens, & eux vendist deuant que le roy seisist les biens, vncore le roy poit seiser les biens en que maines que les biens sont, Quia nullum tempus occurrit Regi.

BVT if the King hath a Villeine who purchases Land, and alien it before the King enter, yet the King may enter into whose hands soeuer the land shal come. Or if the villeine buyeth goods and sell them before that the King seizeth them; yet the King may seize these goods in whose hands soeuer they bee. Because *Nullum tempus occurrit Regi.*

¶ *Si le roy ad villein, &c.* This is euident vpon that which hath beene said before.

¶ *Ou si tiel villeine achata biens &c.* If the Kings Villeine acquire any goods or chattels, the propertie of them is in the King before any seisure or office, and it is well said of an ancient Author, (d) Al roy quant al droit, de la corone ou a franch estate ne poet nul temps occurre, and another (e) speaking in the person of the King saith, Nul temps nest limit quant a mes droits.

Vide Sect.125. Vide Stanford prer. fol.32.a.

35.E.3.tit.Villenage 22.

(d) *Mirror cap.3.*

(e) *Britton. fol.88. Bract. lib.1. quæres Domini possint.*

Sect. 179.

¶ Item si home lessa cert terre a vn auter pur terme de vie sauant le reuersion a luy, & vn villeine purchase del lessor le reuersion; en cest cas il semble que le seignior del villeine poit maintenant ven a la terre, & claime le reuersion come le Seignior le dit villeine, & per cel claime le reuersion est maintenant en luy. Car en auter forme il ne poit vener a le reuersion. Car il ne poit enter sur le tenant a terme de vie. Et sil doit demurrer tanque apres le mort le tenant a terme

ALso if a man let certaine land to another for terme of life sauing to himselfe the reuersion, and a villeine purchase of the lessor the reuersion: In this case it seemeth that the Lord of the villeine may presently come to the land and claime the reuersion as the Lord of the said villeine, and by this claime the reuersion is forthwith in him. For in other forme or manner he cannot come to the reuersion. For hee cannot enter vpon the Tenant for life. And if hee should stay vntill after the death of the Tenant for

¶ *Vit maintenant vener a la terre.*

For hee cannot claime the reuersion but vpon the Land, and hee by his comming vpon the Land for that purpose is no trespassor, because the Law giueth him power to claime the reuersion, lest hee should bee preuented, and claime hee cannot vnlesse hee commeth to the Land. So likewise if the villeine purchase a Seigniorie, rent, Common or any other freehold or Inheritance out of any Lands or Tenements of another,

the Lord may lawfully come to the Land to make his claime to the seigniorie, rent or other profit out of the Land. But if the villeine purchase a Seigniorie or a rent, common, or other inheritance issuing out of the Land of the Lord himselfe, it is said that the Seigniorie Rent common or such other Inheritance is extinguished in the Lords possession without any claime.

de vie, donques per cas il viendra trope tarde. Car perauent le villeine voile granter ou aliene le reuersion a vn auter en le vie le tenant a terme d vie, &c.

life, then perchance hee should come too late. For peraduenture the villeine will grant or alien the reuersion to another in the life of the Tenant for life, &c.

Vide 41.E.3.tit. Audita querela.18. 12.H.4.tit. Execution. 28.F.N.B.104. 1.H.7.15.b.

¶ *Grant.* Here must be intended an attornment, for after the grant and before attornment the Lord may claime the reuersion.

¶ *En la vie del tenant per vie, &c.* Hereby, (&c.) is included tenant in tatle, tenant pur auter vie, tenant by Statute Marchant, Staple, Elegit, and for yeares, for during all these estates the Lord may claime the Reuersion as well as in case of the Tenant for life.

Section 180.

¶ A *Duowson.* Aduocatio so called because the right of presenting to the Church was first gained by such as were Founders, Benefactors, or Maintayners of the Church, viz. ratione fundationis, as where the Ancestor was founder of the Church, or ratione donationis, where he endowed the Church, or ratione fundi as where hee he gaue the soile whereupon the Church was built, and therefore they were called Aduocati: they were also called Patroni, and thereupon the Aduowson is called Ius Patronatus. And in one word Aduowson of a Church is the right of presentation or collation to the Church. Aduocatus est ad quem pertinet ius aduocationis alicuius Ecclesiæ, vt Ecclesiam nomine proprio non alieno possit præsentare. Euery Church is either presentatiue, collatiue, donatiue or electiue. Vide Section 645.648.

¶ En Meisme le maner est, lou vn villein pchase vn Aduowson dun esglˢ plein dun incumbēt, le Seignior del villein poit bener al dit esglise, & claime le dit aduowson, & per cel claim laduowson est en luy. Car sil doit attēdre tanq; apres le mort lencumbent, & adonque a presenter son clerk a le dit esglise, donque en le meane temps le villeine poit aliener le aduowson, & issint ouste le Seignior de son presentment.

IN the same manner it is, where a villeine purchases an Aduowson of a Church full of an Incumbent, the Lord of the villeine may come to the said Church, and claime the said Aduowson, and by this claime the Aduowson is in him. For if hee will attend till after the death of the Incumbent, and then to present his Clarke to the said Church, then in the meane time, the villeine may alien the Aduowson, & so oust the Lord of his presentment.

Fleta. lib. 5. cap. 14.

13.H.14.b.

24.E.3.30. 25.E.3.47. 38.E.3.9. 44.E.3.3. 9.H.6.31. 22.H.6.27. 21.E.4.34.b. Vide Sect.648.

¶ *Plein dun incumbent.* If the Church bee presentatiue, the Church is full by admission and Institution against any common person, but against the King it is not full vntill induction.

¶ *Incumbent,* commeth of the verbe incumbo, that is to be diligently resident, id est, obnixe operam dare, and when it is written encumbent it is falsely written, for it ought to be Incumbent, as Littleton doth here. And therefore the Law doth intend him to bee resident on his Benefice.

10.H.6.7.

¶ *Li*

¶ *Le Seignior del villeine poit vener al eglise & claime le dit advowson.* Note albeit the Aduowson is a thing incorporeall, and not visible, yet because the principall dutie of the Presentee of the Patron is to be done in the Church the clayme of the Lord of the Villeine must be made there, and by that clayme the inheritance of the Aduowson shall be vested in the Lord, for every clayme or demand to devest any estate or interest must bee made in that place which is most apt for that purpose.

¶ *Apres la mort del incumbent.* Nota, a Church presentatiue may become voide fiue manner of wayes, viz. by death whereof Littleton here speaketh. 2. By creation. 3. By resignation. 4. By deprivation. 5. By cession as by taking [redacted] a [redacted] benefice incompatible.

Doct & Stud. lib. 2. ca. 31. 5. E. 3. 180. 10. E. 3 483. 25. E. 3. 49 9 E. 3. 462. 11. H. 4. 37. 59. & 76. 41. E. 3. 5. F. N. B. 31. 32.

¶ *Et adonques a presenter son Clerke al dit eglise, &c.* A presentation is derived A presentando, quia presentare nihil aliud est quam præsto dare, seu offerre. And Littleton here briefely expresseth the effect of a presentation, for it is the act of the Patron offering his Clerke to the Bishop of that Diocese to be instituted to such a Church in these or the like words directed to the Bishop, Præsento vobis A.B. Clericum meum ad Ecclesiam de Dale, &c. This may be done as well by word, as by writing, and if it be by writting it is no Deede, for the presentation is of the Clerke, and the direction to the Bishop, so as this writing is in nature of a Letter to the Bishop: and this is the reason that the King himselfe may present by word as elsewhere is said. A Villein at this day purchaseth an Aduowson in fee, the Church becomes voyde, the Lord for 100. pound giuen by A.B. Clerke presents him to the Church, and his Clerke is admitted, instituted and inducted, yet this gaineth not the Aduowson to the Lord. (d) And so it is in that case if any on the behalfe of A.B. had giuen or contracted with the Lord in consideration of any valuable thing to present A.B. to the said Church, albeit it had beene without the consent or knowledge of A.B. yet it should not haue vested the Aduowson in the Lord. But this was not Law when Littleton wrote. (e) But now by the statute of 31. Eliz. the presentation, admission, institution and induction in both the said cases and in the like are made voide, where before the said statute they were but voydable by deprivation. And if a man present by vsurpation to a benefice by reason of any corrupt contract, agreement, &c. that presentation, and the institution and induction thereupon are voyde, for that act extends to all Patrons as well by wrong as by right, but where any presents by vsurpation, the rightfull Patron and not the King shall present, for otherwise euery rightfull Patron may lose his presentation. And such an incumbent that commeth in by reason of any such corrupt agreement is so absolutely disabled for euer after to be presented to that Church, as the King himselfe, to whom the Law giueth the title of Presentation in that case, cannot present him againe to that Church, for the Act being made for suppression of symonie, and such corrupt agreements so binds the King in that case, as he cannot present him that the Law hath disabled, for the words of the Act be, Shall thereupon and from thenceforth be adjudged a disabled person in Law to haue or enioy the same benefice. (f) And the partie being disabled by the Act of Parliament, (which being an absolute and direct Law) cannot be dispensed withall by any grant, &c. with a Non obstante, as it may be, when any thing is prohibited Sub modo as vpon a penaltie giuen to the King. And the said Act doth not only extend to benefices with cure, but to Dignities, Prebends, and all other Ecclesiasticall liuings.

(d) *Adiudge in communi banco. Mich. 41. & 42 Eliz. inter Baker & Rogers.*
(e) *Adiudged in the Kings bench. Mich. 13. Iacin a quare Imp: brought by the King against the Bishop of Norwich, Thomas Cole & Robert Secker Clerke for the Vicarage of Hauerell in Suff.*
(f) *Pl. Com. 502. 27. H. 8. 2. H. 7 6. 11. H. 7 11. 13. H. 7 8. b. 11. H. 4. 76. 5. E. 3. 29. F N. B. 211. E.*

¶ *Clerke.* Clericus is twofold, Ecclesiasticus (which Littleton here intendeth) and he is either secular, or regular, so called because he is Servus & hæreditas domini: and Laicus, and in this sence is signified a Pen-man, who getteth his liuing in some Court or otherwise by the vse of his pen.

4. H. 4 ca. 12.

Note if the Church becommeth voide, albeit the present auoydance be not by Law grantable ouer, yet may the Lord of the Villeine present in his owne name, and thereby gaine the inheritance of the Aduowson to him and his heires for albeit it be not grantable ouer, yet it is not meerely a Chose in action, (g) for if a Feme couert be seised of an Aduowson, and the Church becommeth voide, and the wife dieth the husband shall present to the Aduowson, (h) but otherwise it is of a bond made to the wife, because that is meerely in action.

(g) *14. H. 4. 12. 38. E. 3. 35. 13. E. 3. quare. imp. 57.*
(h) *43. E. 3. 10. 39. E. 3. 5. 4. H. 6. 5.*

Section 181.

¶ Item il y ad villein regard, & villeine en gros. Also there is a villeine regardant, and a villein in grosse.

¶ *Villein regardant.* Hee is called regardant to the Manor, because he hath the charge to

8. H. 7. 4.

to do all base or villenous services within the same, and to gard and keepe the same from all filthie or loathsome things that might annoy it, and his service is not certaine, but hee must haue regard to that which is commanded vnto him. And thereupon hee is called Regardant, A quo præstandum seruitium incertum & indeterminatum, vbi scire non poterit vespere, quale seruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit, As before hath beene obserued. And Littleton sayeth hereafter, That no other thing is said to be regardant but onely a Villeine: (i) Yet in old Bookes it was sometimes applied to Seruices.

Brast.li.2.fo.26. Mir.ca.2. §.18.

Vid.Sect.184.

(i) 20.E.3.tit.Issue 30.

¶ *In grosse*, is that which belongs to the person of the Lord, and belongeth not to any Mannor, Lands, &c.

villein regardant est sicome home est seisi dun Mañ a que vn villein est regardãt, & celuy que est seisie del dit mañ, ou ceux q̃ estat il ad en mesm̃ le mannor ount este seises de le dit villein & de ses Auncestors, come villeins & niefs regardants a mesme le mannor de temps dont memorie ne curt. Et villeine en grosse est, lou vn hõe seisie dun Mannor a que vn villeine est regardant, & il graunt mesm̃ le villein y son fait a vn auk, donq̃s il est villein en grosse, & nemy regardant.

A villein regardant is, as if a man be seised of a Mannor, to which a villeine is regardant, and he which is seised of the said Mannor, or they whose estate he hath in the same Mannor, haue beene seised of the Villein & of his Ancestours as villeins & niefs regardant to the same mannor time out of memory of man. And villein in grosse is, where a man seised of a Mannor wherunto a villein is regardãt, & granteth the same villein by his Deed to another, then he is a villein in grosse, and not regardant.

Sect. 182.

Mir.ca.2.§.18.

¶ This needeth no explanation, but to adde the saying of an antient Author, Seruage de home est subiection, issuant de cy grand antiquitie, que nul franke coppe poet estre troue per humane remembrance.

Item si vn hõe & ses Ancestors que hee il est, ount este seisies dun villein et de ses ancestors, come des Villeins en grosse, de tẽps dont memorie ne curt, tiels sont Villeines en grosse.

Also if a man and his Ancestours whose heire he is, haue beene seised of a Villeine, and of his Aunceſtors as of Villeines in Grosse, time out of memorie of man, These are Villeines in Grosse.

Sect. 183.

Vi.Sect.441.194.174.74.
(l) Brast.li.5.Tract.5.ca.28.

¶ *Vn fine.* In Latyne, Finis. (l) Ideo dicitur finalis concordia, quia imponit finem litibus, & est exceptio peremptoria. (m) Finis est amicabilis compositio & finalis concordia ex consensu & licentia

(m) Glan.li.ca.1.

Et hic nota, que tiels choses q̃ ne poiẽt este grants, ne aliẽs sans fait ou fine, home que voile auer tiels choses per pre-

AND heere note, that such things which cannot be granted nor aliened without Deed or Fine, a man which will haue

prescription, ne poet autrement prescriber forsque en luy, & en les Auncestors que heire il est & nemy per ceux parols, en luy & en ceux que estate il ad, p̃ ceo q̃ il ne poet auer iour estate sans fait ou auter escripture, le quel couient deste monstre a le court, si il voile auer aſcun aduantage de ceo. Et pur ceo que le grant & alienation dun villeine en gros ne gist sãs fait ou aut̃ escriptut̃, hõe ne poit p̃scriber ẽ vn villein ẽ gros sãs mõstrãs d̃ escriptut̃, sinon en soy meſme que claime le villeine, & en les Ancestors que heire il est, Mes d̃ tiels choses que sont regardants ou appendãts a vn mannor, ou a auters terres & Tenements home poet prescriber que il et ceux que estate il ad, queux fueront seisies de le Mannor, ou de tiels terres & Tenements, &c. ont este seisies de tiels choses come regardants ou appendants a l'manor, ou a tiels fres & tenements, de temps dont memorie, &c. Et la cause est, pur ceo que tiel Manor,

such things by prescription, cãnot otherwise prescribe, but in him and in his Aunce-stors whose heire hee is, and not by these words, In him & them whose estate hee hath, for that he cãnot haue their estate without Deed or other Writing, the which ought to bee shewed to the Court, if hee will take any aduantage of it. And because the grant and alienation of a villeine in grosse, lieth not without Deed or other Writing, a man cannot prescribe in a Villein in grosse, without shewing forth a Writing, but in himselfe which claims the Villeine, and in his Aunceſtours whose heire hee is. But of such things which are regardant or appending to a Mannour, or to other lands and tenements, a man may prescribe, that hee and they whose estate hee hath who were seised of the Mannour, or of such lands and Tenements, &c. haue bin seised of those things, as regardant or appendant to the mannor or to such lands & tenements time out of mind of man: And the

Domini Regis, vel eius Iusticiariorum. (n) Talis concordia finalis dicitur eo quod finem imponit negotio, adeo vt neutra pars litigant̃ ab eo de cætero poterit recedere. Of the seuerall parts of a Fine, and many incidents to the same, you shall read in my Reports.

(n) *Lib.9.cap.3.Statut. de Modo leuandi Fines. Pl.Com.357.*

Lib.5.fol.38.Teyes case.

¶ *Que estate, &c.* Quorũ statum, as much to say, whose estate he hath. Here Littleton declareth one excellent rule, (o) That a man cannot prescribe in any thing by a que estate, that lyeth in grant, and cannot passe without Deed or Fine, but in him and his Auncestors he may, because he comes in by discent, without any conueyance. Neither can a man plead a que estate in himselfe, of any thing that cannot passe without Deed, (p) but in another he may, as in barre of an auowrie, the Plaintife may plead, a que estate in the seignorie in the auowant. But Littletons words are to bee obserued, (Home que voile auer tiels choses per prescription) Therefore (q) when a thing that lieth in graunt is but a conueyance to the thing claimed by prescription, there a que estate may bee alledged of a thing that lieth in grant, as a man may prescribe, that he and his Ancestors, and all those whose estate hee hath in an Hundred, haue time out of mind, &c. had a Leet, &c. this is good, &c.

(o) 22.*Ass.*53.23.*Ass.*6. 12.*H.*7.10.18.

(p) 39.*H.*6.8.18.*E.*4.23.

(q) 11.*H.*4.89.19.*R.*2. *Action sur le case* 51. 13.*E.*3.*Br.*674.

(r) Regularly the Plaintife shall not intitle him by A que estate, but hee must shew how he came by it, but after Auowrie made, the Plaintife shall plead a que estate, because he is now become as a Defendant.

(r) 9.*E.*4.3.*b.*29.*Ass.*19. 2.*H.*6.10.48.*E.*3.*Tit.*33. 3.*H.*28.

(s) A man may plead, A que estate of a tenure in taile, or of an estate for life, so as he auerreth the life of them, but he cannot plead a que estate, of a Lease for yeares, or at will.

(s) 41.*Ass.*2.40.*Ass.*28. 2.*H.*4.20.15.*E.*4.1. 5.*H.*7.39. 18.*E.*4.19. 7.*E.*6.*Tit. Que estate Br.*31. 27.*H.*6.3.7.*El. Dyer* 238.

(t) A Disseisor, Abatour, Intruder, Recoueror, or any other that commeth in the post, shall

(t) 22.*H.*6.34.6.*E.*4.12. 31.*H.*8. *Que estate Br.*48. 39.*H.*6.14. 9.*H.*6.*Exep.*46

shall plead a que estate.

(u) 11.H.4.81.27.H.6.32. 9.E.4.3. 2.E.6.111.que estate,8.1.E.6.que estate, Br.49.

(v) A que estate must bee alledged in the Tenant or Defendant himselfe, and not in one in the meane conueyance from whom hee claymeth and yet some bookes be to the contrary.

ou fres & tenemts, poyent passer per alienation sans fait, &c.

reason is for that such manor or lands and tenements may passe by alienation without deed,&c.

¶ *Le quel covient deste monstre al court.* **The reason whereof a** Deede that is pleaded ought to be shewed to the Court is,because euery Deede must proue it selfe to haue sufficient words in Law whereof the Court must aduudge, and also to bee proued by others as by witnesses or other proofe if the Deede be denied which is matter of fact.

¶ *Per alienation sauns fait,&c.* **Here by** (&c.) **is implyed, that** whatsoeuer passeth by Liuery of seisin either in Deede or in Law, may passe without Deede, and not only the Rents and seruices parcell of the Mannor shall with the demeanes as the more principall and worthy passe by Liuery without Deede, but all things regardant, appendant, and appurtenant to the Mannor as incidents or aduncts to the same shall together with the Mannor passe without Deede, all which, as here it appeareth, and elsewhere is said,shall passe without saying Cum pertinentijs.

Section 184.

¶ R *Egardant, Vide Sect.* 181.

¶ *Appendants.* **Ap**pendant is any inheritance belonging to another that is superiour or more worthy. In law it is called Pertinens quasi invicem tenens holding one another, a word indifferent both to things appendant and things appurtenant, the quality and nature of the things doe make the difference; but regardant (as our Author saith) is only applied to a villeine. (w) Appendants are euer by prescription, but appurtenants may be created in some cases at this day. As if a man at this day grant to a man and his heires common in such a moore for his beasts leauant or couchant vpon his mannor, or if he grant to another common of Estouers or turbary in fee simple to be burnt or spent within his mannor, by these grants these Commons are appurtenant to the mannor, and shall passe by the grant thereof In the ciuill Law it is called Adjunctum.

Vide Sect.1.
(w) 5. Ass.9.8.H.7.4.5. 28.H.8.Dier.30.b. Pl. Com.381.F.N.B. fo.181.

¶ E T est ascauoir, **que nul chose est nosme regardant a vn manor, &c. forsq; villein, mes certeine auters choses come aduowson & cõmon de pasture, &c. sont nosmes appendants al mannor ou al fres & tenements, &c.**

AND it is to be vnderstood that nothing is named regardant to a mannor,&c. but a villeine, but certaine other things as an aduowson, & common of pasture,&c. are named appendant to the mannor or to the lands and tenements,&c.

(x) If A. be seised of a mannor whereunto the franchise of waife and stray and such like are appendant, and the King purchaseth the mannor with the appurtenances, now are the royall Franchises reunited to the Crowne, and not appendant to the Mannor, but if he grant the mannor in as large and ample manner as A. had, &c. it is said that the Franchises shall be appendant (or rather appurtenant) to the Mannor.

(x) 43.Ass.p.10. 43.E.3.22.

Concerning things appendant & appurtenant, two things are implied. (y) First that prescription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, vnlesse the thing appendant or appurtenant agree in quality and nature to the thing whereunto it is appendant or appurtenant, as a thing corporeall cannot properly bee appendant to a thing corporeall, nor a thing incorporeall to a thing incorporeall. But things incorporeall which lye in grant as Aduowsons, Villeines, Commons and the like, may bee appendant to things corporeall, as a Mannor house or lands, or things corporeall to things incorporeall, as lands to an Office. (z) But yet as hath beene said) they must agree in nature and quality, for (a) common of Turbary or of Estouers cannot be appendant or appurtenant to land, but to house, to be spent there. (b) Nor a Leete that is temporall, to a Church or Chappell which is Ecclesiasticall Neither can a Nobleman, Esquire, &c. clayme a seate in a Church by prescrip-

(y) Hill & Granges case. Pl.Com.168.

(z) 1 H.7.24.Pl.Com.169.
(a) 5.Ass.9.
(b) 10.E.3.5. 37 H.6.34. 26.H.8.4.lib.4.fo.36.37. in Turringhams case.

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tion as appendant or belonging to land, but to a house, for that such a seat belongeth to the house in respect of the inhabitancie thereof, and therefore if the house bee part of a Mannor, yet in that case he may clayme the seate as appendant to the house for the reason aforesaid.

Secondly, that nothing can be properly appendant or appurtenant to any thing vnlesse the principall or superiour thing bee of perpetuall subsistance and continuance, for example. An Vsuowson, that is said to be appendant to a Mannor, is in rei veritate appendant to the Demeines of the Mannor, which are of perpetuall subsistance and continuance, and not to Rents or services, which are subiect to extinguishment and destruction. 5.E.6. Dier.70.b.

An Vsuowson is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is made parcell of the Mannor of Dale by way of Escheat, the Vsuowson is only appendant to the Mannor of Dale.

And where it is said that a chamber may be parcell of a Corody, and passe by the name of the Corody which may be extinguished, there he that hath the Corody hath but his habitation in the chamber, as a Fellow of Trinity Colledge in Cambridge hath in his chamber, or as one that had a Corody and a chamber in an house of Religion, he had but his habitation only. As for Offices of fee whereunto land may appertaine they are of perpetuall subsistance, either being in esse, or in that they are grantable ouer. 31.H.6.15.b.

Note that an Vsuowson at one turne may be appendant, and at another Turne in grosse, as if the Mannor be deuided betweene Coperceners, and euery one hath a part of the Mannor without saying any thing of the Vsuowson appendant, the Vsuowson remaines in copercenarie, and yet in euery of their turnes, it is appendant to that part which they haue; and so it is if they make composition to present against common right, yet it remaines appendant. But if vpon such a partition an expresse exception be made of the Vsuowson, then the Vsuowson remaines in Copercenarie and in grosse, and so are the bookes reconciled. 13.E.2.quer.Imp.170. 43.E.3.35. 13.E.3.quer. Imp.58. 17.E.3.38. 9.Eliz. Dier.259.7.E.3.20. 19.E.3.quer.Imp.59. 35.H.6.32.33.38.H.6.9. 2.H.7.5.

¶ *Comon de pasture.* (c) Communia, It commeth of the English word Common, because it is common to many, and thereupon, and accordingly is here called by Littleton Common of pasture, for that the feeding of beasts in the land wherein the Common is to be had belongs to many. (c) Glanvill,lib.13.ca.36. Bract. lib.4.ca.19.& 40. Britt.cap. 55.56.57. Fleta,lib.4.ca.19. Mirror,ca.5.§.3.

(d) There be foure kindes of Common of pasture, viz. Common appendant which is of common right, (and therefore a man need not prescribe for it) for beasts commonable (that is) that serue for the maintenance of the plough, as horse and oxen to plow the land, and for kine and sheepe to compester the land, and is appendant to arrable land. (d) 20.E.3. Admeasurement,8. Temps E.1.Common 24.17. E.2.ibid.23.4.H.6. 22.H.6.

(e) The second is Cõmon appurtenant that is for beasts not commonable, as swine, goates, and the like. (f) If a man purchase part of the land wherein Common appendant is to bee had, the Common shalbe apportioned, because it is of common right, but not so of a Common appurtenant, or of any other Common of what nature soeuer. But both Common appendant and appurtenant, shalbe apportioned by alienation of part of the land to which Common is appendant or appurtenant, and for Common appurtenant one must prescribe. (e) 37.H.6.34. 26.H.8.4. F.N.B.181. (f) Lib.4.fo.37.38.&c. Turnghams case.

(g) The third is Common per cause de vicinage, which differeth from both the other Commons, for that no man can put his beasts therein, but they must escape thither of themselues by reason of vicinity, in which case one may Inclose against the other, though it hath beene so vsed time out of minde, for that it is but an excuse for trespasse. (g) Lib.8.fo.78.79. W.Wildes case.

The last is Common in grosse, which is so called for that it appertaineth to no land, and must be by writing or prescription. Of Common appendant, appurtenant, and in grosse, some bee certaine, that is for a certaine number of beasts, some certaine by consequent, viz. for such as be leuant and couchant vpon the land, and some be more incertaine, as common sans number in grosse, and yet the Tenant of the land must common or feed there also.

There bee also (h) diuers other Commons as of Estouers, of Turbary, of Pischarye, of digging for Coles, Mineralls and the like. (i) If Common appendant bee claymed to a Mannor, yet in rei veritate it is appendant to the Demeines and not to the services, and therefore if a Tenancie escheate, the Lord shall not encrease his Common by reason of that (h) Fleta vbi supra. (i) 18.E.3.fo.43.

(k) If a man clayme by Prescription any manner of Common in another mans land, and that the owner of the land shall be excluded to haue Pasture, Estouers or the like, this is a prescription or custome against the Law, to exclude the owner of the soyle, for it is against the nature of this word Common, and it was implyed in the first graunt that the owner of the soyle should take his reasonable profit there, as it hath beene adiudged. * (l) But a man may prescribe or alledge a custome to haue and enioy Solam vesturam terræ, from such a day till such a day, and hereby the owner of the soyle shall be excluded to pasture or feede there, and so he may prescribe to haue Seperalem pasturam, and exclude the owner of the soyle from feeding there. Nota diuersitatem. (m) So a man may prescribe to haue Seperalem piscariam in such a water, and the owner of the soyle shall not fish there, but if hee clayme to haue Communiam piscariæ, or Liberam pischarian, the owner of the soyle shall fish there, and all this hath (k) 15 E.2.Prescript.51. 12.H.8.fo.2. * Pasch. 26.Eliz.in the Kings Bench, inter White & Shirland in Com.Oxon. Vid.Sect.1.& 2. (l) Vid. 3.E.3.29,30. 4.E.3.7. 46.E.3.23. 15.E.2.Prescript.51. (m) 20.H.6.4. 10.H.7.24. Temps E.1, Assise 428.

(*) Inter Chinery & Fisher in le Common Banke in replevin & Mich.29.& 30.Eliz. inter Shirland & White in Com. Oxon. Et inter Fisher & Crathrode eodem termino in Essex

beene resolued. (*) And therefore it is necessary for every man by learned aduice to pleade according to the truth of his case for Parols sont plea.

(n) A man seised of land whereunto common is appendant, and is disseised, the Disseisee cannot vse the common vntill he entreth into the land whereunto it is appendant. (o) But if a man be disseised of a Mannor whereunto an Aduowson is appendant, hee may present vnto the Aduowson before he enters into the Mannor, and the reason of this diuersitie is because in the case of the common it should be a preiudice to the Tenant of the soile. For if the Disseisee might doe it the Disseisor also might put on his Cattle, which should be a double charge to the Tenant, but not so of the Aduowson.

(n) 19.H.6.33.
(o) Vide Sect.541.

Sect. 185.

Bract.lib.1.cap.6.
Britt.fol.78.
Fleta lib.1.cap.3.43.E.3.4.b.
19.E.2.tit.vill.34.
18.E.4.29.
(p) 19.H.6.32.26.Ass.62.
37.Ass.17.
11.H.4.16. in Appeale.

THis is intended in some action brought against him that made such confession, (p) or where hee is brought into Court by course of Law, for if he commeth into the Court extraiudicially and not by any due course of Law, such confession is without warrant of Law and bindeth not the partie, because the Court had no warrant to take it. But if a Præcipe be brought against one he may confesse himselfe villeine to an estranger, and that he holds the Land in villenage of him, and this is good and shall bind him. And if in that case the demandant reply, that hee the day of his writ purchased was a free man, and thereupon issue is taken, and hee is tried to be free yet he shall remayne villeine to the stranger in respect of his confession.

¶ Item si home voile en Court d record soy conuster destre villein, que ne fuit villein adeuant, tiel est villeine en grosse.

ALso if a man will acknowledge himselfe in a Court of Record to bee a Villeine, who was not a villeine before, such a one is a Villeine in grosse.

41.E.3.tit.vill.6.

19.H.6.32.b.

If a writ of Natiuo habend' be brought against one, and the Plaintiffe as he ought offereth in his Count to proue the villenage by the Cousins and Kindred of the Defendant, and thereupon produceth the Vncles of the Defendant who vpon examination confesse themselues to be villeines to the Demandant, this confession being entred of Record, doth so bind, that albeit they were so free before, they and the heires of their bodies are by this confession bond and villeines for euer, for the Vncles came in by due course of Law in an Action depending in Court.

Sect. 186.

F.N.B.161.a.
Regist.132.& 277.
Britton.fol.20.
Bract.lib.3.tract.2.ca.12.13
Fleta lib.1.cap.28.
3.H.5.tit. vtlawrie Statham.

NIefe. Or Naife is in Latine naturalis, seu natiua, because for the most part Niefs are bond by Natiuitie.

¶ *Feme que est vtlage est dit waiue.*

Waiue, Wauiata and not vtlegata or exlex, for that women are not sworne in Leets, or Torns, as men which be of the age of 12. yeares or more be, and therefore men may be called vtlegati, id est, extra legem positi, but women are Waiuiatæ, id est, derelictæ, cast out or not regarded, because they were not sworne to the Law, wherein it is to be noted that in ancient time a man was not said to bee within the Law, that was not sworne to the Law, which is intended of the Oath of Allegiance in the Leet.

¶ Item home que est villein est appelle villein, & feme que est villein est appelle nyefe: Si come home que est vtlage est dit vtlage, & feme que est vtlage est dit waiue.

ALso a man which is a villein is called a Villeine, and a woman which is Villein, is called a Neife. As a man which is outlawed, is called outlawed: and a woman which is outlawed, is called Waiued.

Regist.orig.132.

And the Outlawrie of a woman is legally called Waiuiaria mulieris.

Sect.

Sect. 187.

¶ Item si vn Villein, prent franke feme a feme, & ad issue enter eux, issues serront Villeines. Mes si nief prent franke home a sa baron, lour issues serr̃ franke.

* Et cest contrarie a le ley ciuill, car la est dit, Partus sequitur ventrem. *

Also if a Villeine taketh a freewoman to wife, and haue issue betweene them, the issues shall be Villeines. But if a Niefe taketh a freeman to her husband, their issue shall be free.

* This is contrarie to the Ciuill Law, for there it is said, *Partus sequitur ventrem.* *

¶ Circulus totum alimentum à stipite capit poma tamen edit sua. The science takes all his nourishment from the stocke, and yet it produceth his own fruit. *Fortescue cap.42. Gianuill.lib.5.cap.6. Hill.29.E.1. coram Rege Eborum in Thesaur.*

(q) Si quis de seruo patre natus sit & matre libera pro seruo reddatur occisus in ea parte, quia semper à patre, non à matre generationis ordo texitur, si pater sit liber & mater ancilla, pro libero reddatur occisus. (r) Lex Angliæ nunquam matris sed semper patris conditionem imitari partum iudicat. (q) *Lib.rub.cap.77.* (r) *Fortescue vbi supra.*

(s) The husband and wife are all one person in Law, and the Niefe marrying a freeman is infranchised during the couerture, and therefore by the Common Law of England, the issue is free. (s) *Herewith agreeth Britton fol.78.b*

(t) Si mulier serua copulata sit libero, &c. quod partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro suo libero redit in pristinum statum seruitutis nisi hæres ei dotem fecerit de gratia. And when a bondman marrieth a free woman, they are all one person in Law, and Duæ animæ in carne vna, and vxor subiecta est viro, & sub potestate viri. (t) *Bract.lib.4.fol.298.b. Idem lib.1.ca.6. Mirror.cap.2.§.18.*

(u) Obseruatur in Com' Cornubiæ de tali consuetudine, quæ talis est quod si liber homo ducat natiuam aliquam in vxorem ad liberum tenementum & liberum thorum, si ex ea duæ procreantur filiæ, vna erit libera & altera villana, quia ibi partiti sunt pueri inter liberum patrem & Dominus vxoris villanæ. (u) *Bract.lib.4.fol.271.*

(x) Qui vero procreantur ex natiua vnius, & natiuo alterius, proportionabiliter inter Dominos sunt diuidendi. (x) *Glanuill.lib.5.cap.6.*

¶ *Et ceo est contrarie al ley ciuil.* For true it is that by that Law Partus sequitur ventrem, as well where a free man takes a bond woman to wife, as where a bond man takes a free woman to wife. In the first case the issue is by the Ciuill Law bond, and in the other free, both which Cases are contrarie to the Law of England: but this is no part of Littleton, and therefore we in this manner passe it ouer. *Fortescue ca.42.*

Section. 188.

¶ Item nul bastard poit estre villein, si non que il voile soy conuster estre villeine en court de record, car il est en ley quasi nullius filius, pur ceo que il ne poit enheriter a nulluy.

Also no bastard may be a villeine, vnlesse hee will acknowledge himselfe to bee a villeine in a Court of Record, for he is in law, *quasi nullius filius*, because he cannot be heire to any.

¶ *Nullius* (a) *filius.* Cui pater est populus, pater est sibi nullus, & omnis,

Cui pater est populus, non habet ille patrem. (a) *Vide Sect.399. 13.E.1.tit.villen.36.*

(b) Some hold that the Bastard of a niefe shall bee a villeine. (c) And others hold that if a villeine hath a Bastard by a woman, and after marrieth the woman, that this Bastard is a villeine, but the Common Law is a Bastard, and consequently, quasi nullius filius, as Littleton here saith. (d) Though a Bastard be a reputed sonne, yet is he not such a sonne in consideration whereof an vse can bee raysed for the reason that Littleton here yeilds, because in iudgement of Law he is Nullius filius. (e) And for (b) *Bract.lib.1.fol.5.a. Fleta lib.1.cap.3. Britton.fol.78.* (c) *39.E.3 34. 43.E.3.4. Britton.vbi supra.* (d) *23.Eliz. Dier.374.* (e) *13.Eliz. Dier.296.*

14.Eliz.Dier.313.
18 Eliz.Dier.345.

for the same reason where the Statute of 32.H.8. of wills speaketh of Children, bastard children are not within that Statute, and the bastard of a woman is no child within that Statute where the mother conueys Lands vnto him.

(f) Trin.18.E.1.Rot.61. Bodf. coram Rege.

(f) It was found by verdict that Henrie the sonne of Beatrice which was the wife of Robert Radwell deceased, was borne per vndecim dies post vltimum tempus legitimum mulieribus constitutum. And thereupon it was adiudged, Quod dictus Henricus dici non debet filius prædicti Roberti secundum legem & consuetudinem Angliæ constitut'. Now Legitimum tempus in that case appointed by Law at the furthest is nine moneths, or fortie weekes, but shee may be deliuered before that time, which iudgement I thought good to mention. And this agreeth with that in Esdras. Vade & interroga prægnantem, si quando impleuerit nouem menses suos ad hoc poterit matrix eius retinere partum in semetipsa? & dixi, non potest Domine.

4.Esdras 4.41.
Vide Pancirol. eius reperta, pag.485.&c.

Sect. 189.

¶ *Chescun villeine est able & franke de suer, &c.* (g) In an Action brought by a villeine. Versus non Dominum, non valebit ei exceptio, quia est seruus alienus ex quo nihil ad ipsum vtrum liber sit an seruus. (h) And it is to bee obobserued, that hee that hath but a particular estate in a villeine, as tenant for life or for yeares shall disable the villeine if he brings an action against him, but the Lessor shall not (as it is said) disable him, (i) Examinatio villenagij non tenet, nisi ex ore veri Domini fuerit pronunciata.

¶ Item chescun villein est able & franke de suer touts mãners dactions enuers chescun person, forspris enuers son Seignior a que il est villein. Et vncore en certein choses il poit auer action enuers son Seignior. Car il poit auer enuers son Seignior vn action dappeal' d mort son pere, ou dauters de ls aunceſters que heire il est.

Also euery Villein is able and free to sue all manner of Actions against euery person, except against his Lord to whom he is villeine: and yet in certain things he may haue against his Lord an Action, for hee may haue against his Lord an action of appeale for the death of his father, or of his other Ancestors whose heire he is.

(g) Bract.lib.4. fol.196. Britton cap.49 fol.125.

(h) 14.E.4.6.b. 15.E.4.32. 20.E.3. tit.Villein 10. 38.E.3.21.

(i) Fleta lib.2.cap.4.

¶ *Appeale.* Appellum commeth of the French word Appeller, that signifieth to accuse, or to appeach. An Appeach. (k) An Appeale is an accusation of one vpon malice with a purpose to attaint him of felonie by words ordained for it.

(k) Britt cap.22.fol.38. Bracton.lib.1.fol.6.

(l) 18.E.3.32. 11.H.4.93. 1.H.4.6. 29.H.6.tit. Coron 17.

¶ *De mort* (l) for a villeine shall not haue an appeale of robberie against his Lord, for that he may lawfully take the goods of the villeins as his owne. (m) But if in an Appeale of death it be found for the Plaintiffe, he is enfranchised for euer. Hinc enim est quod eo ipso sunt huiusmodi Domini seruos suos amissuri cum de iniurijs fuerint conuicti. And there is no diuersitie herein whether he be a villeine regardant, or in grosse although some haue said the contrarie.

(m) Fleta li.1.ca.5.1.H.4.6

Section 190.

¶ *Rape.* (n) raptus is when a man hath carnall knowledge of a woman by force and against her will.

(n) Mirror.ca.1.§.12. Cap.3.de rape. & cap.4.de homicide.

¶ Auxi vn Niefe que est rauie per sa seignior, poit auer vn appeale de rape enuers luy.

Also a Niefe that is rauished by her Lord, may haue an Appeale of Rape against him.

¶ *Appeale de rape.* (*) By the generall puruiew of the Statutes, that giue the Appeale of Rape, the wife shall haue an Appeale of Rape against the Lord. (o) And it seemeth by the ancient Authors of the Law, that this so hainous an offence was seuerely punished by losse of eyes and other members, but of old time it was felony which you may reade at large in the second part of the Institutes W.1.cap.13.

(*) W.1.ca.13. W.2.ca.35. 6.R.2.ca.6. 11.H.4.cap.13. 1.E.4.cap.1.

(o) 29.H.6.tit.Coron.17. Bract.lib.3.fol.147.

(p) And

(p) And this word Rape which our Author here vseth is so appropriated by Law to this case, as without this word (Rapuit) it cannot be expressed by any Periphrasis or circumlocution, for Carnaliter cognovit eam or the like will not serue. (p) 9.E.4.26. Mirror, ca.1.§.13.

Section 191.

CAury il vn villr soit fait execut a vn auter, & le Sñr del villeine fuit en dette a le testator en vn certeine summe dargent que nest my paie, en ceo case le villeine come executor de le testator auera action de det en-uers son seignior, pur ceo q̃ il ne recouera le debt a son vse demesne, mes al vse le testator.

ALso if a villeine be made executor to another, and the Lord of the villeine was indebted to the testator in a certaine summe of money which is not paid, In this case the villeine as executor of the testator shall haue an action of debt against his Lord, because hee shall not recouer the debt to his own vse, but to the vse of the testator.

COf this matter sufficient hath beene spoken in this chapter before. The villeine shall haue an action as Executor against his Lord, and it is no plea for the Lord, to say that the Plaintife is his villeine, for hee shall not bee enfranchised by the vser of this action, because hee hath it by a gift in Law to the vse of the Testator and not to his owne vse. 21.E.4.50.a.

Sect. 192.

ITem le Sñr ne poit prender hors del possession de tiel villein q̃ est executor les biens le mort, & sil face, le villeine cõe executor auera action de trespasse de mesñs les bñs issint prises enuers son Sñr, & recouera damages al vse le testator. Mes en touts tielx cases, il couiet que la Sñr que est defendant en tielx actions face protestation, q̃ le plaintife est son villein, ou autrement le villeine serra enfranchise, co-

ALso the Lord may not take out of the possession of such villeine who is Executor of the goods of the deceased, and if he doth, the villeine as executor shall haue an action for the same goods so taken against his Lord, and shall recouer damages to the vse of the testator. But in all such cases, it behoueth that the Lord which is defendant in such actions maketh protestation that the plaintife is his villein, or otherwise the villeine shall bee infran-

CLE *Seignior ne poet prender hors del possession, &c.* Of this also sufficient hath beene said before.

C *Et recouera damages al vse del testator.* (q) Note damages recouered by the Executor in an action of trespasse shall bee assets, and yet they were neuer in the testator. And so it is in other like cases as by our bookes it appeareth. (q) 21.E.4.4.b. 11.H.6.35.b. 3.H.6.2. 2.H.4,21. 1.H.4.6.

(r) If an Executor hath a villeine for yeares, and the villeine purchases lands in fee the Executor entreth, he shall haue the whole fee simple, but because he had the villein in auter droit, viz. as Executor to the vse of the dead it shall be assets in his hands. Note a diuersitie betweene the quantitie of the estate and the qualitie of it, for the Law respecteth not the quantity of the estate, for not only (r) Doct. & Stud. Brooke tit. Villenage, 70.

(s) Tenant

(f) Tenant in taile and Tenant for life of a villeine shall haue the perquisite of the villeine in fee, but (t) Tenant for yeares and Tenant at will also shall haue it in fee.

(f) L.3.E.4.61.

(t) 21.H.6.37.

ment que le matter soit troue p̃ le Sñr, & encounter l'villein, come est dit.

chised although the matter bee found for the Lord, & against the villeine as it is said.

But the Law respecteth the qualitie, for in what right he hath the Villeine, in the same right shall he haue the perquisite, as in the case of the Executor aboue said, and in the case of the Bishop (u) that hath the Villeine in right of his Church, he shall haue the perquisite in the same right.

(u) 41.E.21.

(w) 18.E.3.29.

(w) So if a man hath a Villeine in the right of his wife, he shall haue the perquisite also in her right. But if the purchase be after issue had, then the Baron shal haue the perquisite to him and his heires, because by the issue hee is intituled to bee Tenant by the Curtesie in his owne right.

Vi. Sect. 193.

(x) Pl.Com.276.b. In Greisbrokes case.

¶ *Protestation.* (x) Protestatio is an exclusion of a conclusion, that a partie to an Action may by pleading incurre, or it is a safegard to the partie which keepeth him from being concluded by the plea he is to make, if the issue be found for him: but in this case without a protestation, albeit the issue be found for the Lord, the Villeine shall be enfranchised, as it appeareth hereafter in this Section.

Sect. 193.

Britt.fol.79.125.b.126.a.

C *Eo serra trie en le Countie, &c.* We tried, that is as it is intended by the verdict of xii. men, that is called in Law a triall triatio.

(a) In this case the Law doth fauour the villeine in the issue, for otherwise by the rule of Law in like cases hee ought to answer to the speciall matter, viz. to the regardancy, but in fauour of liberty hee may reply that hee is free and of free estate, and consequently this issue concerning the person shall bee tried where the writ is brought. (b) The like law it is, if issue bee joyned vpon the Ideocy of the Plaintife or Defendant it shall bee tried where the writ is brought because it concerneth the person.

(a) 7.E.3.50. 26.E.3.73. 38.E.3.34. 40.E.3.36. 43.E.3.4.31. 44.E.3.36. 47.E.3.26. 22.H.6.52. 35.H.6.12. 39.H.6.24. Vide Sect.534.

(b) 2.Mar.Dier.112.

C *In fauorem libertatis.* It is commonly said that three things be fauoured in Law, Life, Liberty, Dower.

(c) Fortescue, ca.42.

(c) Impius & crudelis iudicandus est qui libertati non favet: Angliæ iura in omni casu libertati dant favorem.

Tryall is to finde out by due examination the truth of the point in issue or question betweene the parties, where-

C Item si villeine suist vn actiõ de tresp̃asse, ou vn auter action enuers son Sñr en vn Countie, & le Sñr dit q̃ il ne serra respondus, pur ceo q̃ il est son villein regardant a son manor en auter County, & le Plaintife dit que il est franke & de franke estate, & nemy villeine, ceo serra trie en le Countie lou le Plaintife auoit conceiue son action, & nemy en l' county lou le manor est, & ceo est in fauorem libertatis, & pur cel cause vn estatute fuit fait an.9.R.2.cap.2. le tenor de quel ensuist en tiel forme. Item pur la ou pluisors villeins, & Neifes, sibien des graundes Seignors

Also if a villeine sueth an action of tresp̃asse or any other action against his Lord in one Countie, and the Lord saith that he shall not bee answered because hee is his villeine regardant to his mannor in another County, & the plaintife saith that hee is free, and of a free estate, and not a villein, this shall bee tried in the Countie where the Plaintife hath conceiued his action, and not in the County where the mannor is, and this is in fauour of liberty. And for this cause a statute was made *anno* 9.R.2.ca.2. the tenor whereof followeth in this forme. Also for that where many villeins & neifs,

ors, come des auters gentes, sibñ espirituals come temporals senfuent, deins cities, villes, & lieux enfranchise, come en la citie de Londres, & auters semblables, & feignont diuers suits enuers lour Sñrs, a cause de eux fait franks per le respõs de lour Sñrs: Accorde est & assentus, q̃ les seigniors, ne auters, ne soyent my forbarres de lour Villeines per cause de lour respons en ley. Per force de quel estatute, si alcun villeine voylloit suer alcun maner de action a son vse demesne en alcun Countie, ou il est fort a trier enuers son Seignior l' Sñr poyt estyer de pleader que le plaintife est son villeine, ou de faire protestation que il est son villein, & de pleder son auter matter en barre. Et si ils sont a issue, & issue soit troue pur le Sñr, donqz l' villein est villeine come il fuit deuant per force de meisme lestatute. Mes si le issue soit troue pur le villeine, donque le villeine est franke, pur ceo que le

aswell of great Lords as of other men aswell of spirituall and temporall flye and goe into Cities, Townes and places franchised as into the Citie of London and other like places, and feyne diuers suites against their Lords because they would make themselues free by the answer of their Lords. It is accorded and assented, that Lords nor others shall not be forebarred of their villeins by reason of their answer in Law. By force of which statute if any villeine will sue any manner of action to his owne vse in any County where it is hard to trie against his Lord, the Lord may choose whether he wil plead that the plaintife is his villeine, or make protestation that hee is his villeine, and plead his other matter in barre. And if they be at issue, and the issue be found for the Lord, then the villeine is a villeine as hee was before by force of the same statute. But if the issue bee found for the villeine, then the villeine is free, because that the Lord tooke

upon iudgement may bee giuen. And as the question betweene the parties is twofold, so is the triall thereof: for either it is questio iuris, (and that shall be tried by the Iudges either vpon a Demurrer, speciall verdict or exception, for Cuilibet in sua arte perito est credendum: & quod quisque norit in hoc se exerceat, and it is commonly and truly said, Ad questionem iuris non respondent iuratores;) or it is quæstio facti. And the triall of the fact is in diuers sorts whereof a light touch is giuen before, Sect. 102. of these a trtall by xii. men (here intended by Littleton) is the most frequent and common; And some few rules of Law, are necessary here to be remembred (for the better vnderstanding of the bookes of Law hereafter) where and from what place, viz. De quo vicineto, out of what neighbourhood the Jury shall come, a necessary point to bee knowne, for if there bee a mistryall, (that is) if the Jury commeth out of a wrong place, or returned by a wrong officer and giue a verdict, iudgement ought not to bee giuen vpon such a verdict. (d) wherein the most generall rule is, that euery tryall shall be out of that Towne, Parish, or Hamlet, or place knowne out of the towne, &c. within the Record, within which the matter of fact issuable is alledged, which is most certaine and neerest thereunto, the Inhabitants whereof may haue the better and more certaine knowledge of the fact: as if the fact be alledged in quadam platea vocat' Kingstreet in civitate Westm. in com' Midd. in this case the Visne cannot come out of Platea, because it is neither Towne, Parish, Hamlet, nor place out of the neighbourhood whereof a Jury may come by Law; but in this case it shall not come out of Westminster but out of the Parish of St. Margaret, because that is the most certaine. But therein

Vid. Sect. 234.

Vid. Sect. 102.

Vid. Sect. 234. more of this matter.

(d) 3. E. 3. 73. 20. H. 6. 30. 7. H. 4. 27. 9. H. 5. 8. 8. H. 6. 34. 7. H. 6. 27. 17. E. 3. 56. 43. E. 3. 5. 47. E. 3. 6. 34. H. 6. 1.

therein also it is to bee noted, that if it had beene alledged in Kingstreet in the parish of St. Margaret in the County of Middlesex, then should it haue come out of Kingstreet, for then should Kingstreet haue been esteemed in law a towne:

Seignior ne prist al commencement pur son plee que le villein fuit son villeine, mes ceo prist per protestation, &c.

not at the beginning for his Plee that the villeine was his villeine, but tooke this by protestation. &c.

(e) for whensoeuer a place is alledged generally in pleading (without some addition to declare the contrary as in this case it is) it shall be taken for a Towne. (f) And albeit Parochia generally alledged is a place incertaine, and may, (as we see by experience) include diuers Townes, yet if a matter be alledged in Parochia, it shall be intended in Law that it containeth no more Townes then one, vnlesse the party doth shew the contrary. (g) But when a parish is alledged within a City, there without question the Visne shall come out of the parish, for that is more certaine then the City.

(h) If a trespasse be alledged in D, and nul tiel ville is pleaded, the Jury shall come out De corpore comitatus, but if it be alledged in S. and D. and nul tiel ville de D. is pleaded, the Jury shall come out de Viceneto de S. for that is the more certaine. So if a matter be alledged within a Mannor, the Jury shall come de Viceneto manerij, but if the Mannor bee alledged within a towne, it shall come out of the towne, because that is most certaine, for the Mannor may extend into diuers townes. And all these points were resolued by all the Iudges of England vpon conference betweene them in the Case of Iohn Arundel Esquire indicted for the death of William Parker. *

(i) In a reall action where the Demandant demands land in one County, as heire to his father, and alledge his birth in another County, if it bee denied, that he is heire, it shall not be tryed where the birth was alledged, but where the land lyeth, for there the Law presumes it shall be best knowne who is heire. But if the Demandant make himselfe heire to a woman, for that is the surer and more certaine side and the mother is certaine, when perhaps the father is incertaine, and therefore there it shall be tried, where the birth is alledged, because they haue more certaine conusance then where the land lyeth. And so it is where generally bastardy is alledged, the tryall shall be in like case Mutatis mutandis. (k) If a man pleade the Kings Letters patents, and the other partie pleade Non concessit, it shall not be tryed, where the Letters patents beare Date, for they cannot be denyed, but where the land lyeth.

Euery tryall must come out of the neighbourhood of a Castle, Mannor, Towne or Hamlet, or place knowne out of a Castle, Mannor, Towne or Hamlet, as some forreits and the like, as before and by the Authorityes thereupon quoted appeareth.

Euery plea concerning the person of the Plaintife, &c. shall be tried where the writ is brought as it appeareth before.

When the matter alledged extendeth into a place at the Common Law and a place within a Franchise, it shall be tryed at the Common Law.

(l) In an action against two, the one pleads to the writ, the other to the action, the plea to the writ shall be first tryed, for if that be found, all the whole writ shall abate, and make an end of the businesse.

(m) In a plea personall against diuers Defendants, the one Defendant pleades in bar to parcell, or which extendeth only to him that pleadeth it, & the other pleades a plea which goeth to the whole, the plea that goeth to the whole, (that is) to both Defendants shall be first tried, and of this opinion was Littleton in our bookes, for the tryall of that goeth to the whole, and the other Defendant shall haue aduantage thereof, for in a personall action the discharge of one is the discharge of both. As for example, if one of the Defendants in trespasse pleade a release to himselfe, (which in Law extends to both) and the other pleades not guiltie (which extends but to himselfe) or if one pleade a plea which excuses himselfe only, and the other pleade another plea, which goeth to the whole, the plea which goeth to the whole shall bee first tried, for if that be found it maketh an end of all, and the other defendant shall take aduantage hereof, because the discharge of one is the discharge of both; but in a plea reall it is otherwise, for euery Tenant may lose his part of the land; (n) as if a Præcipe be brought as heire to his father against two, and one pleade a plea which extendeth but to himselfe, and the other pleads a plea which extends to both as bastardie in the Demandant, & it is found for him, yet the other issue shall be tryed, for he shall not take aduantage of the plea of the other, because one Tenant may lose his part by his mispleа. (o) But where an issue is ioyned for part, and a Demurrer for the residue, the Court may direct the tryall of the issue, or iudge the Demurrer first at their pleasure.

(p) If a Venire fac. be awarded to the Coroners where it ought to be to the Shiriffe or the Visne commeth out of a wrong place, yet if it be Per assensum partium, and so entred of Record

(e) 4.E.3.30. 8.E.3.68. 39.H.6.13. Brooke pleading 61.
(f) 4.E.4.41. 5.E.4.20. 22.E.4.2. 35 H.6.30. 22.H.6.47. lib.1.162. Digges case. lib.11 fo.25. lib.6.fo.14.
(g) 1.E.3.8. 7 H 6.38.
(h) 22.E.4.tit.vishe F.27. 6.H.7.3 b 11.H.2.7.22.b. 9.E.43.a. 3.E.4.26. 39.H 6.tresp.93. 4.E.3.30.
* Lib.6 fo.14. Arundels case.
(i) 45.E.2.5.a. 46.E.3.6. & 7. Gernons case. 18.E.3.58. 11.H.4.56.b.57. 17.E.3.36.b 39. Ass.10. 38.Ass. 30. 35. Ass.7.
(k) Mich.31. & 32.Eliz. Rot.365. in the Kings bench inter Edan & Franklyne adiudge. 3.Mar.Dier.129. 18.Eliz.Dier.353. 17.Eliz.Dier.342.
(l) 8.E.4.24. 9.H.6.46.47. 21.H.6.4. 18.Ass.7. 30.E.3.16.17. 7.E.4.31. 27.H.8.30. 11.H.4.68.
(m) 15.E.4.25.b 9.H.6.46 26.E.3. 7.E.4.31. 39.E.3.16.17.
(n) 9.H.6.46. 39.E.3.16.17.
(o) Lib.10.fo.54. and the bookes there cited.
(p) Mich.21.et22.Eliz.Dier 367. Lib.5.fo.36.b. Bainhams case 39.E.3.2.b. 44.E.3.6 11 H.6.13. Lib.5. fo.40. Dormers Case.

it shall stand, for Omnis consensus tollit errorem. And thus much of these excellent points of learning: and if you desire to know the institution and right use of this tryall by 12. men, and of the antiquitie thereof, and more of this matter, reade the 234. Section hereafter which is worthy of your observation. *Vid.Sect.234.*

¶ *Estatute.* Or statute, **This commeth of the Latyn word** Statutum, which is taken for an Act of Parliament made by the King, the Lords and Commons, and is deuided into two branches generall and speciall. This statute here mentioned is a generall statute, and is darkely and obscurely penned, *Vid.25.E.3.ca.18. F N B.77.c. 26.E.3.73.*

¶ *Et sils sont a issue.* (q) Issue, exitus, **a single, certaine, and materiall point** issuing out of the allegations or pleas of the Plaintife and Defendant consisting regularly vpon an affirmatiue and negatiue to be tried by twelue men, And it is twofold, a speciall issue, as here in the case of Littleton, or generall, as in trespasse, not guilty: in assise, nul tort, nul disseisin, &c. And as an issue naturall commeth of two seuerall persons, so an issue legall issueth out of two seuerall allegations of aduers parties. (q) *Vid.Sect.414.7.H.6.43. 9.E.4.36. 36.H.6.15. 5.E.4.26. 11.H.4.79.*

And to make our bookes more easie to be vnderstood concerning this point, it is good to set downe some necessary rules (amongst many other) concerning ioyning of issues An issue being taken generally referreth to the Count, and not to the Writ: As in an Account the Writ chargeth him generally to be his receiuer, the Count chargeth him specially to be his receiuer by the hands of T. the Defendant pleadeth that he was neuer his receiuer in manner and forme, &c. this shall referre to the count, so as he cannot be charged but by the receipt by the hands of T. *7.E.3.34.*

(r) A speciall issue must be taken in one certaine materiall point which may bee best vnderstood, and best tryed. (r) *10.E.3.Issue 31.22. Ed. 4.28. 8.E.3.8. 9.H.6.18. 38.E.3.33.*

(s) An issue shall not be taken vpon a negatiue pregnant, which implyeth another sufficient matter, but vpon that which is single and simple, as Ne dona pas per le fait, imply a gift by parol, therefore the issue must be Ne dona pas modo & forma. (s) *21.H.6.9 b. 16 E.4 5. 24.E.3.32.33.75 31.E.3. Issue 17. 13.E.3.I.27. 21.E.3.49. 30.E.3.8. 10.E.3.32. 22.E.3.13. 18.E.3.Issue 35. 5.H.7.8. 31.Ass.25. 21.E.4.4.8. 2.H.4.13. 38.H.6.22. 40.E.3.5. 5.E 3.24.*

(t) An Issue ioyned vpon an Absque hoc, &c ought to haue an affirmatiue after it: two affirmatiues shall not make an issue, vnlesse it be lest the issue should not be tried. (t) *18.El.Dyer 253. 22.Hen.6.19. 32.H.6.23 2.R.3. 6.H.7.5. 11.H.4.79*

(u) Some issues bee good vpon matter affirmatiue and negatiue, albeit the affirmatiue and negatiue be not in precise words, as in debt for rent vpon a lease for yeares, the Defendant pleades that the Plaintif had nothing at the time of the Lease made, the Plaintif repleyeth that he was seised in fee, &c. this is a good issue. (u) *2.H.4.4. 5.H.7.12. 26. 11.H.4 83. 6 E.4.6.b.*

(w) Where the issue is ioyned of the part of the Defendant, the entry is Et de hoc ponit se super patriam, but if it be of the part of the Plaintife, the entrie is Et hoc petit quod inquiratur per patriam. (w) *26.H.8.3. 18.El.Dyer 353.*

(x) There be some negatiue pleas, that bee issues of themselues, whereunto the Demandant, or Plaintife cannot reply, no more then to a generall issue which is Et prædictus A similiter. As if the Tenant doe vouche, and the Demandant counterplead that the Vouchee or any of his Ancestors had any thing, &c. whereof he might make a Feoffment, hee shall conclude, Et hoc petit quod inquiratur per patriam, & prædictus tenens similiter. So in a Fine pleaded by the Tenant, &c. the Demandant may say, Quod partes finis nihil habuerunt, & hoc petit quod inquiratur per patriam & præd' tenens similiter. And so in a writ of Dower, the Tenant plead Vnques seisie que dower, he shall conclude, Et de hoc ponit se super patriam, & pred'. petens similiter, and so in many other cases, and of this opinion was Littleton in our bookes. (x) *22.H.6.57.59. 33.H.6. 21. 3.H.7.9. 12.E 4 13. 17.E.3.53. 77,78. 22.E.3. 16 17.24.E.3.50.40 E.3.19*

(y) A man leaueth his wife enseint with a childe, issue shall not be taken that she was not enseint by her husband on the day of his death, for Filiatio non potest probari, but the issue must bee whither she was enseint the day of his death. (y) *41.E.3.11.b.*

(z) A protestation auayleth not the partie that taketh it, if the issue be found against him, and therefore if the issue be found for the villeine, he is infranchised for euer. And yet in some speciall case albeit the issue be found against him that maketh the protestation, yet he shall take benefit of his protestation, (*) as if a man entreth into warrantie, and taketh by protestation the value of the land, albeit the plea be found against him, yet the protestation shall serue him for the value. (z) *10.E.4.Protest.5. 10.E.4.12. 32.Ass.9. 30.E.3.14. 9.H.6.59. Vid.Sect.192. * 30.E.3.14.*

Section 194

¶ Item le Sir ne poet mayhemer son villeine. Car sil mathema son villein,

ALso the Lord may not mayme his villeine. For if hee mayme his villeine,

¶ M*Ayhemer*, (a) or Mehaigner, A French word of which commeth Mayhim, mahemium (id est) membri mutilatio, and (a) *Stamf.li.1.ca.41. Glanuil.lib.14.ca.7. Bract.lib.3. fol.144,145. Brit.cap.25. fol.48,49. Flet.li.1.ca.38.*

Mirror.cap.1.§.9. and membrum eſt pars corporis habens deſtinatam operationem in corpore. Mayhemium vero dici poterit vbi aliquis in aliqua parte ſui corporis effectus ſit inutilis ad pugnandum. And the Law hath ſo appropriated this word Mayhem, which our Author here vſeth, to this offence, as mayhemauit cannot be expreſſed by any other word, as mutilauit, truncauit, or detruncauit, or the like.

Vide Sect.1.

¶ *Il ſerra indite*, or rather endite, and ſo is the originall, for it commeth of the French word enditer, and ſignifieth in Law an accuſation found by an Enqueſt of 12. or more vpon their Oath, and the accuſation is called Indictamentum. And as the Appeale is euer the ſuite of the partie, ſo the enditement is alwayes the ſuit of the King, and as it were his declaration. (b) Some deriue it from the Greeke word ἐνδειγνυμι to accuſe.

(b) Lamb.Iuſt. of Peace.

(c) Vide 1.H.4.6.b.

¶ (c) *Nauera &c. Appeale de mayhem.* Becauſe in that Appeale he ſhall recouer but damages, which the Lord after execution might take againe, and ſo the iudgement inutile and illuſory, and ſapiens incipit à fine. And the Law neuer giueth an action where the end of it can bring no profit or benefit to the Plaintife. But here it is to be obſerued that albeit the partie grieued can haue no action for the Mayhem, yet at the Kings ſuite hee ſhall be puniſhed therefore, for the reaſon hereafter expreſſed in this Section. (d) And in ancient time there were Appeales de plagis & de impriſonamento, but they are out of vſe and turned to actions of Treſpaſſe.

(d) Fleta lib.1.cap.40. Britt.cap.25. Bract.143. Mirror cap.3.

¶ *Fine*, finis. Here fine ſignifieth a pecuniarie puniſhment for an offence, or a contempt committed againſt the King, and regularly to it impriſonment appertayneth. And it is called finis becauſe it is an end for that offence. (e) And in this caſe a man is ſaid Facere finem de tranſgreſſione, &c. cum Rege, to make an end, or fine with the King for ſuch a tranſgreſſion. It is alſo taken for a ſumme giuen by the tenant to the Lord for concord, and an end to bee made. (f) It is alſo taken for the higheſt and beſt aſſurance of Lands, &c.

(e) Regiſt.Iudic.25. Lib.8.fol.59. Beechers caſe.

(f) Vide Sect.74.174.441.

Here it is good to ſee what a fine differeth from an amerciament. (g) Amerciament in Latine is called miſericordia, for that it ought to be aſſeſſed mercifully, and this ought to bee moderated by affeerement of his equals, or elſe a writ De moderata miſericordia, doth lie: and thereof Glanuill ſaith thus. (h) Eſt autem miſericordia Domini Regis qua quis per iuramentum legalium hominum de vicineto eatenus amerciandus eſt, ne aliquid de ſuo honorabili contenemento amittat.

(g) Lib.8.fol.59. Beechers Caſe. F.N.B.76.

(h) Glanuill.lib.9.cap.11. Magna Charta cap.14. Fleta lib.2.cap.43.& 60.& lib.1.cap.43. Bract.lib.3 fol.116.

(i) The cauſe of an amerciament in plea reall, perſonall or mixt (where the King is to haue no fine) is for that the Tenant or Defendant ought to render the demand (as hee is commanded by the Kings Writ) the firſt day: which if he do, he ſhall not be amerced (ſo as for the delay that the Tenant or Defendant doth vſe he ſhall be amerced. (k) And albeit the amerciament cannot be impoſed, nor the King fully intitled thereunto vntill iudgement be giuen, becauſe by the iudgement the wrong is diſcerned, yet a pardon before iudgement, after iudgement giuen, ſhall diſcharge the partie, becauſe the originall cauſe, viz. the delay, &c. is pardoned. (l) Whereas if a Præcipe be brought againſt an Infant, and hanging the plea, he commeth of full age

(i) 22.E.3.1.& 2. 14.E.3.amerciam.16. 8.R.2.ibid.26.&c.

(k) Pl.Com.401. Coles caſe. 37.H.6.21. Lib.5.fol.49. Vaughans caſe.

(l) Vaughans caſe vbi ſupra. Beechers caſe vbi ſupra.

il ſerra de ceo endite a le ſuit le Roy, & ſil ſoit de ceo attaint, il ferra pur ceo vn grieuous fine & ranſome al Roy. Mes il ſemble que villeine nauera pas per le ley vn appeal de Mayhem enuſ ſon Sñr, Car en appeale de Mayheme home recouera forſqz damſ, & ſi le villeine en ceo cas recoña damſ enuers ſon ſeignior, & ent auoit execution, le Sñr poit prender ceo que le villeine auoit en execution de le villiene, & iſſint le recouerie voide, &c.

he ſhall of that be indicted at the Kings ſuit. And if hee be of that attainted, he ſhall for that make grieuous Fine and ranſome to the King. But it ſeemeth that the Villeine ſhall not haue by the Law any Appeale of Mayhem againſt his Lord, for in Appeale of Mayhem a man ſhal recouer but his dammages. And if the Villeine in that caſe recouer dammages againſt his Lord, and hath thereof execution, the Lord may take that the Villeine hath in execution from the Villeine, and ſo the recouery is void, &c.

he shall be amerced for the delay after his full age. So likewise if the Demandant or Plantiffe bee Nonsuit or Judgement giuen against him, hee shall bee likewise amerced pro falso clamore.

(m) And for the payment of this amerciament the Demandant or Plantiffe, &c. shall find pledges, and those Demandants or Plantiffes, that shall find no pledges, (as the King, the Queene, an Infant, &c.) shall not be amerced. And therefore when such are Demandant or Plantiffe, the Writ shall not say, Si Rex, &c. fecerit te securum de clamore suo prosequendo.

(n) If a Writ doe abate by the Act of the Demandant or Plantiffe, or for matter of forme, the Demandant or Plantiffe shall be amerced, but if it abate by the Act of God, as by the death of one where there is two or the like, there shall be no amerciament. And to an amerciament imprisonment belongeth not, as it doth to a fine or ransome. If you desire to reade more of fines and amerciaments. Vide lib.8.fol.38.39. &c. Greslyes case. & lib.11. fol 43.44. Godfreyes case.

(o) It is to be knowne that Wit, Wita, is an old Saxon word, and signifieth an amerciament, as Fledwite an amerciament for fleeing or being a fugitiue, and so is Flemiswite, Bledwite an amerciament for drawing of blood. Ferdwite concerning warfare, and so Letherwite, Childwite, Wardwite and the like. Sometime it signifieth forfeiture, sometime freedome, or acquittall.

(p) And Bote is also an ancient Saxon word, and sometime signifieth amerciament, or compensation, as Thefbote Manbote, or freedome from the same, as Brigbote, Castlebote, Burghbote.

Wera or Were (q) sometime signifieth amerciament or compensation, but properly Wera Anglice idem est in Saxonis lingua vel pretium vitæ hominis appretiatum. Which & the like words you shall often reade in ancient Charters.

(m) F.N.B.31.f.47 C. & 101.a. Br. lib.4 fol.254. 17.E.3 75. 18.E.3.2. Br. tit. amercim 53. 43.Ass.45.&c.

(n) Bethers case lib.8 f.60.b.

(o) Fleta lib.1.cap.43. Stat. de expesit. verb. um.

(p) Lamb. explication of Saxon words. Leges Ina. cap.19.

(q) Lamb. vbi supra & Fleta lib.1.cap.43.

C *Ransome.* (r) Redemptio is here taken for a grand summe of money for redeeming of a great Delinquent from some heynous crime, who is to bee captiuate in prison vntill he payeth it, some hold it to amount to his whole estate, and others hold that ransome is a treble fine. (s) But in Legall vnderstanding a fine and ransome are all one, for vpon the Statute of Merlebridge cap 3 vpon these words, Non ideo puniatur Dominus per Redemptionem. (t) The Tenant shall not haue (where the Lord distreyneth within his fee where nothing is behind) an Action of Trespasse, quare vi & armis against his Lord, for therein the Lord should be punished by redemption, that is by fine, and in that action the fine is very small. And this is manifest by many Authorities in all succession of ages: and this appeareth by our Author in this place, for he saith, Il ferra pur ceo vn grieuous fine & ransome. Where fine and ransome must of necessitie in his optnion be taken for all one: for if the fine and ransome were diuers, then should the partie, that mayhemed the Villeine pay two summes, one for a fine, and another for a ransome, which neuer was done. And aptly a redemption and a fine is taken to bee all one, for by the payment of the fine hee redeemeth himselfe from imprisonment, that attendeth the fine, and then there is an end of the businesse.

(r) Dier.6.Eliz.232.

(s) See the second part of the Institutes Merlebr. cap.3.

(t) 3.H.7.10. 48.E.3.5 6. 41.E.3.26. 44.E.3.13. 2.H.4.4. 11.H.4.78. 1 H.6.6. 7 H.7.14. 8.E.4 15.10.E.4.7. 20.E.3.3. 21.E.4.3.Mich.17 & 18. Eliz. Beuels case lib.4 fol.11. & lib.9. fol.76. Combs case.

It signifieth properly a summe of a money paid for the redemption of a captiue, and is compounded of re and emo, that is to redeeme or buy againe. And it is to be knowne, that (u) by the ancient law of England, if the Defendant in an Appeale of Mayhem had bin found guiltie, the iudgement against the Defendant had beene, that hee should lose the like member, that the Plantiffe lost by his meanes; as if the Plantiffe had lost an hand, the Defendant also should lose one, & sic de cæteris: In respect whereof the Writ said, (w) Felonicæ mayhemauit, for that the Defendant should lose a member.

(u) 40. Ass 9. Mirror cap.4. & ca.5.§.18. Britton cap.25 fol.48. Bract lib.3 f.l.144. 145. Fleta lib.1.cap.38.

(w) Bracton. vbi supra. Britton cap.3 fol 77.b.

Alwayes at the Common Law, when the Defendant should lose life or member, the Writ said Felonice, &c. And now albeit the Law be changed (for at this day, the Plantiffe shall, as our Author saith, recouer but damages) yet the Writ of Appeale saith still Felonice.

Note the life and members of euery subiect are vnder the safegard and protection of the King, for as Bracton (x) saith, Vita & membra sunt in potestate Regis. And therewith agreeth a notable Record, Pasch.19.E.1. coram Rege Rot.36. Northt. vita & membra sunt in manu Regis, to the end that they may serue the King and their Countrie when occasion shall be offered. May, the Lord of the Villeine for the cause aforesaid cannot mayheme the Villeine, but the King shall punish him for mayhiting of his subiect (for that hereby hee hath disabled him to doe the King Seruice) by fine, ransome, and imprisonment vntill the fine and ransome bee paid. So as there is a manifest diuersitie betweene a ransome and an amerciament. For ransome is euer when the law inflicteth a corporall punishment by imprisonment, (& so is also a fine) but otherwise it is of an amerciament as hath bin said. And (y) Ancients haue said that Ransome nest forsque redemption de paine corporell per fine des deniers. This offence of mayhem is vnder all felonies deseruing death, and aboue all other inferior offences, so as it may be truly said of it, that it is, Inter crimina maiora minimum, & inter minora maximum. And in my Circuit in Anno 11. Iacobi Regis in the Countie of Leicester one Wright a young strong and lustie Rogue,

(x) Bract. lib.1.fol.6. Pasch.19.E.1. coram Rege Rot.36.Northt.

(y) Mirror. cap.5.§.1.& 3.

Rogue to make himselfe impotent thereby to haue the more colour to beggr or to bee relieued without putting himselfe to any labour, caused his companion to strike off his left hand, and both of them were indited, fined, and ransomed therefore, and that by the opinion of the rest of the Iustices for the cause aforesaid.

¶ *Voyde, &c.* Here by (&c.) is implyed a maxime in Law, Quod inutilis labor & sine fructu non est effectus legis. And against, Non licet, quod dispendio horr. And Sapiens incipit à fine, and Lex non præcipit inutilia. (z) Therefore the Law forbiddeth such recoueries whose ends are vaine, chargeable and vnprofitable.

(z) *Vide Sect.* 273. & 378.

Sect. 195.

¶ D*Emaundant*, petens, Is hee which is Actor in a reall action, because hee demandeth Lands, &c. And Plaintif, querens in actions personals and mixt, quia quæritur de iniuria, &c. Tenant, tenens in reall actions, and defendant, defendens in actions personall and mixt.

¶ *Defence.* Commeth of the word defendo, so called of the manner of the pleading, viz. prædict' A.B. defendit vim & iniuriam, &c.

For example in a personall action brought by A. against C. D. the defence is, & prædictus C. D defendit vim & iniuriam quando, &c. & damna, & quicquid quod ipse defendere debet, &c.

¶ Item si vn Villein soit demandant ẽ action real, ou plaintife en action psonal, ẽuers son sñr, si le Sñr voile plede en disabilitie de son pson, il ne poit faire pleine defence mes il defendera forsq; tout & force & demandera iudgement sil serra respondus, & monstre son matter maintenant, comt il est son villein, & dõera iudgment sil serra respondue.

ALso if a Villeine bee demandant in an action real, or plaintiffe in an action personall against his Lord, if the Lord will plead in disabilitie of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demand the iudgment if he shall be answered, and shew his matter by and by how he is villeine, and demand iudgement if he shall be answered.

In this defence there bee three parts to bee considered, First, when he defendeth the wrong and the force, this hath a double effect, viz. to make himselfe partie to the matter, and this is the reason, that the Defendant in this and the like actions can plead no plea at all before he makes himselfe partie by this part of the defence, as it appeareth here by Littleton, that (a) if the Defendant will plead in disabilitie of the person of the Plaintiffe he must first make himselfe partie by this first part of the defence. Neither can he plead to the iurisdiction of the Court without this part of the defence. Secondly, (b) By the defence of the Damages, he affirmeth that the Plaintiffe is able to sue, and (vpon iust cause) to recouer Damages. Thirdly, And by the last part, viz. and all that which he ought to defend, when and where he ought, he affirmeth the iurisdiction of the Court; Et sic de similibus. And of such necessitie is it for the Tenant or Defendant to make a lawfull defence, as (c) albeit he appeareth and pleades a sufficient barre without making defence, yet iudgement shall be giuen against him.

(a) 40.E.3.36. 14.H.6.18 35.H.6.12. 1.E.4.15.

(b) 29.E.3.23. 8.H.6.3.

(c) 36.H.6. *iudgement* 58.

(d) 18.E.4.6. & 7.

(d) If Villenage be pleaded by the Lord in an Action reall, mixt or personall, and it is found that he is no Villaine, the bringing of a Writ of Error is no enfranchisement, because thereby he is to defeat the former iudgement, and if in the meane time, the Plaintiffe or Demandant bring an action against the Lord, he need make no protestation, so long as the Record remayneth in force, for at that time he is free, but the Lord shall be restored to all by a Writ of Error.

Section 196.

(e) *Bract.lib.5.fol.421. Britton.cap.49.fol.125. Mirror.cap.2.§.18.*

¶ V*N est lou Villeine suist action &c.* Littleton here

¶ Item 6. maners de homes y sont queux, sils suont ac-

ALso there are fiue mãner of mẽ who if they sue, iudgement

tion

tion, iudgement poit estre demaund sils serrót respondus, &c. Un est, lou villeine suist action enuers son Seignior, come en le cas auantdit.

may bee demanded, if they shall bee answered, &c. One is where a Villeine sueth an Action against his Lord, as in the case aforesaid.

rehearseth .6. kind of disabilities of the person, disabling him to sue any action reall, personall or mixt.

13.H.4.Sunty,12.agarden shall disable.

¶ *Sils serrõt respondus.* This is the legall conclusion of the plea, when the plea is in disabilitie of the person. And of the verbe respondere came responsalis often used in the ancient Authors of the Law.(f) Responsalis was he, that was appointed by the Tenant or Defendant, in case of extremitie and necessitie to alleage the cause of the parties absence, and to certifie the Court vpon what triall, he will put himselfe, viz. the Combate or the Countrie. So as his power was more then the Essoinor which casteth an Essoigne only to excuse the absence of the partie, as an estranger which casteth a protection, doth. For by the Common Law, the Plaintife or Defendant, Demaundant or Tenant could not appeare by Attornie without the Kings speciall warrant by Writ or Letters Patents, but ought to follow his Suite in his owne proper person (by reason whereof there were but few Suites) (g) Abusion est a reteiner attorny sans breue de la Chancerie. And therefore Bracton saith truly (h) Attornatus hæc omnia facere potest (that is, plead all manner of pleas) Est igitur magna differentia inter Attornatum & Responsalem. So as the statutes that giue the making of Attorneys, haue worne out Responsales. Now what manner of men Attorneys ought to be, or rather what they ought not to be, heare what Antiquity hath said, (i) Attorneyes poient estre touts ceux aux queux ley voile suffer, fems ne point este Attorneyes, ne enfans, ne serfs, ne nul que est en gard ou autrement faut de foy, ne nul criminous, ne nul essoigne, ne nul que nest a le foy le Roy, ne nul que ne poet este Counter, &c.

(f) *Brakt. lib.4.fo.212.b. & lib.5.fo.349. Fleta,lib 6.ca.11. Glanuill lib.11.ca.1. Britton ca.126. Vid W.1.ca.43. F.N.B.25.C.Regist.9.*

(g) *Mirr.ca.5.§.*

(h) *Bracton, vbi supra.*

(i) *Mirror ca.2.§.21.*

Section 197.

¶ Et ii. est lou vn home est vtlage sur action d̃ det, ou Trespas, ou sur aut act, ou Indictment, le tenant ou defendant poit monstre tout le matter de record, & lutlagarie, & demaunde iudgement sil ser̃ respondue, pur ceo que il est hors de la ley de suer̃ alcun action durant le temps que il soit vtlage.

THe 2. is, where a man is outlawed vpon an Action of debt or trespasse, or vpon any other action or indictment, the Tenant, or the Defendant may shew all the matter of Record and the outlawrie, and demand iudgement if he shall bee answered, because he is out of the Law to sue an action during the time that he is outlawed.

¶ *E 2. est* (k) *lou vn home est vtlage, &c.* But these generall words receiue a distinction, viz. (l) if an Executor or an Administrator sueth any action, Utlary in the Plaintife shall not disable him, because the suite is In auter droit, that is in the right of the Testator, and not in his owne right. And for the same reason, (m) a Maior and Comminalty shall haue an action, though the Maior bee outlawed. (n) In a Writ of Error to reuerse an Utlary, Utlary in that suite, or at any strangers suite shall not disable the Plaintife, because if he in that action should be disabled, if he were Outlawed at seuerall mens suites, he should neuer reuers any of them. (o) In an Attaint outlary in the Plaintife cannot be pleaded in disability of the person (p) Outlary in Chester or Durham shal not disable the Plaintife in any Court at Westminster, &c. (q) Minor vero & qui infra ætatem 12. annorum fuerit, vtlagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua nec in decenna. (r) He that is abiured the realme may be disabled, for that hee is extra legem, and yet he is not properly outlawed.

(k) *Bracton lib.5.fo.421. Britton ca.22.fo.39. Mirror,ca.3.de Exceptions a prouers ca.4.disaults punishable.*

(l) *21.E.4.49.b. 21.H.6.30.b. 14.H.6.15.*

(m) *12.E.4.fo.12*

(n) *7.H.4.42.*

(o) *23.H.8.ca.32.H.7.7.*

(p) *Mirror,cap.3.acc. 12.E.4.16. 33.H.6.ca.2.*

(q) *Bract lib.3.fo.125. 3.H.5. Vtlag.17.11. 38.E.3.5.*

(r) *Britton.fo.39.*

¶ *Monstre tout le matter de record.* Here note two things, first by this word (Monstre) that (s) when any man pleads an Utlary in disability of the person, that hee

(s) *20.H.2.Corone 232. 19.Ass.p.10. 3.H.6.15.b. 37.H.6.23.5.H.7. 6.Eliz.Dier.228.F.N.B.244 Staf.pl.coron.105.*

he must shew forth the Record of the Outlawrie, maintenant sub pede sigilli, (because the Plea is but dilatorie) vnlesse the Record be in the same Court. But if he plead an Outlarie in barre, if it be denied, he shall haue a day to bring it in.

(t) 28. Ass. 49. 12. E. 3. Vtlagaris 3. M. 4. & 5. El. Dyer 222. 38. E. 3. 13.

Secondly, (t) before the Defendant can disable the Plaintife, the Outlawrie must appeare of Record, and the Iudgement after the quinto exactus giuen by the Coroners in the Countie Court, is not sufficient, vntill the Writ of Exigent be returned, and the Outlawrie appeare of Record: which is manifest by Littletons owne words, (viz.) Matter de Record, whereof see more hereafter, Sect. 503.

It is to be obserued, That there be two kind of appearances before the Quinto exactus, to auoyd the Outlawrie, viz. an Apparance in deed, that is, to render himselfe, &c. And the other is by an apparance in Law, (u) that is, by purchasing a Supersedeas out of the Court where the Record is, which is an apparance of Record: and therefore though it bee not deliuered to the Sherife before the quinto exactus, yet it shall auoyd the Outlawrie, and so are the Bookes that speake hereof to be intended.

(u) Tr. 44. El. in Com. Banc. inter Mere & Delowre. 33. H. 6. 1. 11. H. 4. 34. Dyer 3. El. 192. 5. El. 223. 4. H. 4. le 1. case. 8. H. 4. f. 7. 37. H. 6 17. 33. E. 3. Ent. 77. 21. H. 6. 20.

(w) If a man be outlawed at the suit of one man, all men shall take aduantage of this personall disabilitie. And so it is in case of Alienage, and of Excommengement: but otherwise it is in case of Villenage, for that disabilitie is onely giuen to the Lord.

(w) 33. H. 6. 19. b. &c.

¶ *Duraunt le temps que il est vtlage.* (x) If the Defendant plead an Outlawrie in the Plaintife, in disabilitie of his person, and the Plaintife after that hee pleaded, purchase a Charter of Pardon, because the Charter hath restored him to the Law, the Defendant shall answer. So note, the disabilitie abateth not the Writ, but disinableth the Plaintife, vntill he obtaineth a Charter of Pardon, and so it appeareth here by Littleton.

(x) 44. E. 3. 27.

¶ *Iudgement sil serra respondue.* (y) If the ground or cause of the Action be forfeited by the Outlawrie, then may the Outlawrie be pleaded in barre of the Action, as in an Action of Debt, Detinue, &c. But in reall Actions, or in personall, where damages be incertaine, (as in Trespasse of Batterie, of Goods, of breaking his Close, and the like) and are not forfeited by the Outlawrie, there Outlawrie must be pleaded in disability of the person.

(y) 9. El. Dyer 262. 7. H. 4. 4. b. Stanf. Pl. Coron. 188. Lib. 5. fo. 109. in Foxleyes case. 28. E. 3. 92. 29. Ass. p. 47. 63. 30. H. 6. 5.

(z) And it is to be obserued, That in the raign of King Ælfred, and vntill, and a good while after the Conquest, no man could haue beene outlawed but for Felonie, the punishment whereof was death: but now the Law is changed, as it appeareth by that which hath beene said; and hereby you shall vnderstand old Bookes and Records which say, That an outlawed man had Caput Lupinum, because he might be put to death by any man, as a wolfe that hatefull beast might. (*) Vtlagatus & waiuiata capita gerunt Lupina, quæ ab omnibus impunè possunt amputari, merito enim siue Lege perire debent, qui secundum legem viuere recusant. And another saith, (a) Vtlage pur felonie teigne leu pur loup, & est criable Woolfeshered, pur ceo que loupe est beast hay de touts gents, & de ceo en auant list al ascun de le occire ou foer del loup dont custome soloit este de Porter les testes al chiefe lieu del countie, ou de la Franchise, & soloit leu auoire dun marke del Countie pur chescun teste de vtlage & de loupe. And this agreeth with the Law before the Conquest, (b) Vtlagatus lupinum gerit caput, quod Anglicè, Woolfeshead dicitur, & hæc est lex communis & generalis de omnibus vtlagatis. (c) But in the beginning of the raigne of King Edward the third, it was resolued by the Iudges, for auoyding of inhumanitie, and of effusion of Christian bloud, That it should not bee lawfull for any man but the Sherife onely, (hauing lawfull warrant therefore) to put to death any man outlawed, though it were for Felonie, and if he did, he should vndergoe such punishments and paines of death, as if he had killed any other man; and so from thenceforth the Law continued vntill this day. (Nota, Woolfeshead, and Wulferfod is all one)* And after in Bractons time, and somewhat before, Processe of Outlawrie was ordained to lie in all Actions that were Quare vi & armis, which Bracton calleth Dilicta, for there the King shall haue a Fyne. Sithence, by diuers Statutes, Processe of Outlawrie doth lie in Account, Debt, Detinue, Annuitie, Couenant, Action sur le Statute de 5. Rich. 2. Action sur le Case, and in diuers other Common or Ciuile Actions. But now let vs heare what Littleton will say vnto vs.

(z) Mir. ca. 1. §. 3. & ca. 3. & 4. sepe ca. 5. §. 1.

(*) Flet. li. 1. ca. 27. Bract. li. 5. fo. 421. Brit. fo. 20. b.

(a) Mir. ca. 4. §. de faults punishable.

(b) Lamb. fo'. 128.

(c) 2. Ass. P. 3. 2. E. 3. tit. Coron. 148.

* Bract. li. 5. fo. 421. 8. H. 6. 9. b. 40. E. 3. 5. 35. H. 6. 6. 40. E. 3. 2.

Sect. 198.

¶ A *Lien.* (a) Alienigena is deriued from the Latyne word Alienus, and according

(a) Bract. li. 5. fo. 415. 427. Mir. ca. 1. §. 3. ca. 5. §. 1. & ca. 3. except. a premiers. Flet. li. 6. ca. 47. Brit. fo. 29. 13. E. 3. Brē. 677. 25. Ed. 3. de Natiu vltra mare. 31. E. 3. Coffyns 5. 42. E. 3. 2. 9. E. 4. 7.

CLE 3. est, vn Alien que est nee hors de la ligeance nostre

THe third is, an Alien which is born out of the ligeance of

nostre Seignior le Roy, si tiel alien voile suer vn Action reall ou personall, le Tenant ou Defendant poit dire que il fuit nee en tiel pais, que est hors d'la ligeanc le Roy, & demaund iudgement si il serra respondue.

our soueraigne Lord the King, if such alien wil sue an Action reall or personal, the Tenāt or Defendāt may say, That hee was borne in such a Countie which is out of the Kings Allegeance, and aske Iudgement, if he shall be answered.

to the Etymologie of the word, it signifieth one borne in a strange Countrie, vnder the obedience of a strange Prince or Countrie, (And therefore Bracton saith, That this exception, Propter defectum Nationis, should rather be, Propter defectum Subiectionis) or as Littleton saith, (which is the surest) Out of the liegeance of the King. Note, here Littleton saith not, Hors del Realme, but Hors de liegeance; for he may be borne out of the Realme of England, yet within the liegeance. And he that is borne within the Kings Liegeance is called sometime a Denizen, quasi deins nee, borne within, and thereupon in Latyne called Indigena, the Kings Liegeman, for Ligeus is euer taken for a naturall borne Subiect. But many times in Acts of Parliament, Denizen is taken for an Alien borne, that is infranchised or denizated by Letters Patents, whereby the King doth grant vnto him, (b) Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noster, infra dictum Regnum nostrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: (c) As he may grant to an Alien, Quod in quibusdam Curijs suis Angliæ audiatur vt Anglus, & quod non repellatur per illam exceptionem quod sit alienigena & natus in partibus transmarinis, to enable him to sue onely. The seuerall sences of which word must be gathered, ex antecedentibus, adiunctis, & consequentibus, and they that take him in that sence, derive the word from Donaison (i.) Donatio, because his freedome is giuen vnto him by the King.

11.H.4.26. 14.H.4.19,20. 3.H.6.55. 22.H.6.38. Stanf.Pl.Cor.197.a. Lib.7.fo.1. Calvins case. Pl.Com.268.per Sanders. Vid.S.F.1.439,440,441.

(b) 9.E.4.f.8. Pl.Com.130 b.

(c) Rot Parl.22.E.1. Elias de Dambrois.

There is another kind, and that is an Alien naturalized, and that must be by Act of Parliament. And this Alien naturalized to all intents and purposes, is as a naturall borne subiect, and differeth much from denization by Letters Patents, for if he had issue in England before his denization, that issue is not inheritable to his father: but if his father be naturalized by Parliament, such issue shall inherit. So if an issue of an Englishman be borne beyond Sea, if the issue be naturalized by Act of Parliament, he shall inherit his fathers lands; but if hee be made Denizen by Letters Patents, he shall not, and many other differences there bee betweene them.

¶ *Ligeance*, à Ligando, Being the highest and greatest obligation of dutie and obedience that can be. Liegeance is the true and faithfull obedience of a Liegeman or Subiect, to his Liege Lord or Soueraigne. Ligeantia est vinculum fidei, ligeantia est legis essentia.

Vid. Calvins case, vbi supra.

Ligeantia domino Regi debita est duplex
- *Perpetua.*
  1. Originaria, siue naturalis, siue nata, (d) and this is alwayes absolute and incident inseperable, nemo patriam in qua natus est exuere, nec ligeantiæ debitum eiurare possit.
  2. Data, aut per denizationem, aut per naturalizationem (vt supradictum est) & ista ligeantia per denizationem potest esse sub conditione.
- *Temporanea, aut*
  - Localis, quia quilebet alienigena qui in hoc Regno sub protectione Regis degit, Domino Regi ligeantiā debet. And if he be indicted of high Treason, the Indictment shall say, (e) Contra Ligeantiæ suæ debitum, & ideo dicitur temporanea & localis, quia non durat nisi quousque infra Regnum moratur.
  - Limitata, As when one is made Denizen for life or in tayle, (f) but one cannot be naturalized either with limitation for life, or in tayle, or vpon condition: for that is against the absolutenesse, puritie, and indiuisibilitie of naturall Allegeance.

(d) 13.El.Dyer f 300.b. Doctor Stories case.

(e) 3.& 4.P.& M.Di.144 Li.7.fo.6.& e. Calvins case.

(f) 9.E.4.7. Calvins case vbi supra. 13.E.3.brē.264 20.E.3.Annuitie 24.17.E.3.21.40.E.3.10. 27.Ass.48. 14.H.4.37. 22.E.4.44. 21.H.7.9. Stanf Prer.54. Lofft de Carl fo.35 E.1.

* An Abbot, Prior, or Priors Alien, shall haue Actions reall, personall, or mixt, for any thing concerning the possessions or goods of his Monasteris here in England, though he bee an Alien borne out of the Kings Liegeance, because he bringeth it not in his owne right, but in

the right of his Monastery, and not in his naturall but in his politique capacitie.

(h) Bracton, 426.427,430. 8.E.3.51.5.E.2.Aiel.8. 13.E.3.Bre.677. 22.E.3.14.20. 21.E.3. Cosinage,5. 42.E.3.2. 13.E.4.9. 11.H.4.26. 9.E.4.7. 19.E.4.7. 20.E.4.6 13.E.4.9.10. 32.H.6.23. 38.H.8 Br.Denizen.10. 1.E.6 Nonhab. Br.13.&.62. Vid 4.H.3. Dower 179. 6.E.3.263. 31.H.6.ca.4. Liure de Entr es in eiect.7. 6.H.8.Dier.2. 6.H.7.15. * 29.E.3.Br.Denizen,15.

¶ *Reall ou personall.* (h) **In this case the Law doth distinguish** betweene an Alien that is a subiect to one that is an enemy to the King, and one that is subiect to one that is in league with the King, and true it is that an Alien enemie, shall maintaine neither reall nor personall action Donec terræ fuer' communes, that is vntill both Nations be in peace; but an Alien that is in league shall maintaine personall actions, for an Alien may trade and traffique, buy and sell, and therefore of necessity he must be of ability to haue personall actions, but he cannot maintaine either reall or mixt actions. An Alien that is condemned in an information shall haue a writ of error to reuerse himselfe, Et sic de similibus.

* If an Alien be made a Prior or Abbot, the plea of Alien nee shall not disable him to bring any reall or mixt action concerning his house, because he is in auter droit, as before is said.

Vid. Stanf. Pl. Cor. 197.a.

¶ *Hors del ligeance nostre seignior le Roy.* **Here** Littleton **doth not say,** out of the Realme or beyond the Sea, (as he doth Sect,439.440.441.677.) But out of the Ligeance; for (as hath beene said before) a man may be borne out of the Realme, viz. of England, as in Ireland, Iersey, and Gerney, &c. and yet seeing hee is not borne out of the Ligeance of the King, as Littleton here speaketh he is no Alien. But hereof there is so much, and so plentifully spoken in our bookes, and especially in the case of Caluyn vbi supra, as this shall suffice.

(i) Liure de Entries Alien.1.

¶ *Et demaund iudgement sil serra respondue.* **So as the Tenant** or Defendant shall neither plead Alien nee to the writ or to the action, but in disability of the person, as in case of villenage and outlawries before. (i) And Littleton is to bee intended of a Alien in league, for if hee be an Alien enemy the Defendant may conclude to the Action.

Section 199.

For Statutes.
Vid.35.E.1.Stat.de Carlile. 25.E.3.ca 22.25.E.3. Statut.de prouisors.27.E.3.c.1 38.E.4 ca.3.2.R.2.ca.12. 3.R.2.ca.3. 12.R.2.ca.5. 16.R.2.ca 5. 2.H.4.ca.3. & 4.6.H.4. a 1.24.H.8. ca.12. 25.H.8.ca.19.20 26.H.8.ca.16. 1.Eliz.ca.1. 5.Eliz.ca.1. 13.Eliz.cc.1. 2.8. 27.Eliz.ca.2. 39.Eliz.ca.18.

For Presidents.
Vid.Mich. 29.E.3.coram Rege in Thesaur.Pasch 44.E.3 Ibid.Melborne Case. Mich.38.H.6.ibid.the case of Richard Beauchamp and others. Hill, 25.H.8.Coram Rege. The Case of Nicke Bishop of Norwich.Trin.36.H.8.Rot.9. Coram Rege, The Case of the Bishop of Bangor. Mich.26.& 27 Eliz.Coram Rege, Perrot against D.Beaunce and others. Booke of Entries, fo. 429. & 430 & ibid. Mich. 9.H.7 fo.23.

Bookes Cases.
21.E.3.40.b. 18.H.6.6. 9.E.4.2.35.E.3.7.24.H.8. tit.Præmunire,16.10.H.4.12. 27.E.3.84.6.H.7.14. 44.E.3.36.

¶ *Præmunire.* **Some** hold an opinion that the writ is called a Præmunire, because it doth fortifie Iurisdictionem jurium regiorum Coronæ suæ of the Kingly Lawes of the Crown against forreine iurisdiction, and against the vsurpers vpon them, as by diuers Acts of Parliaments appeare. But in truth it is so called of a word in the Writ; for the words of the writ bee Præmunire facias præfatum A.B. &c. quod tunc sit coram nobis, &c. where Præmunire is vsed for præmonere, and so doe diuers interpreters of the Ciuill and Cannon Law vse it, for they are præmuniti that are præmoniti. By the statutes before quoted in the margent you shall perceiue what statutes were made before Littleton wrote, and what haue beene ordained since to make offences in danger of a Præmunire.

¶ *Hors del protection le roy.* **The iudgement** in a Præmunire is that the Defendant shalbe from thence forth out of the Kings protection, and his lands and tenements, goods and chattels forfeited

¶ Le 4.est, vn hõe q̃ p iudg. done enuers luy sur vn briefe de Præmunire facias, &c. **est hors de protection le Roy, si il suist alcun action, & le Tenant ou le def. mẽa tout le record enuers luy, il poit demaund iudgement sil serra respondu, car la ley le Roy, & les bẽs le Roy, sont les choses per queux home est protect & aide, & issint durant l'temps que home en tiel cas est hors de la protection le Roy, il est hors de estre aide ou ptect per le ley le Roy, ou per bẽe le Roy.**

THE 4. is, a man who by iudgement giuen against him vpon a writ of *Præmunire facias, &c.* is out of the Kings protection, if hee sue any action, and the tenant or defendant shew all the Record against him, hee may aske iudgement if hee shall be answered, for the Law & the Kings writs be the things by which a man is protected and holpen, and so during the time that a man in such case is out of the Kings protection, hee is out of helpe and protection by the Kings Law, or by the Kings writ.

forfeited to the King, & that his body shall remaine in prison at the Kings pleasure. So odious was this offence of Præmunire, that a man that was attainted of the same might haue bin slain by any man without danger of Law, because (k) it was prouided by Law, that a man might doe to him as to the Kings enemy, and any man may lawfully kill an enemie. But Queene Elizabeth and her Parliament * liking not the extreame and inhumane rigor of the Law in that point did prouide that it should not be lawfull for any person to slay any person in any maner attainted in or vpon any Præmunire, &c. Tenant in taile is attainted in a præmunire, he shall forfeit the land but during his life, for albeit the statute of 16.R.2.ca.5 enacteth, that in that case their lands and tenements, goods and chattells shall be forfeit to the King, that must bee vnderstood of such an estate as he may lawfully forfeite, and that is during his owne life. And these generall words doe not take away the force of the statute De donis conditionalibus, but he shall forfeite all his Fee simple lands, states for life, goods and chattells, and so was it resolued in Trudgins case.

11.H.7.tit.Præmunire,F.5. 17.H.7. Iustice Spilmans in Turbervile's case. Kelwey.fo.195. Doct.& Stud. Lib.2.cap.32. Brooke,tit.Præmunire,21. Temps.E.6.Bishop Barlows case. (k) 24.H.8.Brooke Coron,196 * 5.Eliz.ca.1.

Hill,21.Eliz. Trugins case resolued per les Iustices. 7.H.4.20. Simon Beuerleys case.

C *Car la ley le Roy & les briefes le Roy,&c.* There bee three things as here it appeareth wherby euery subiect is protected, viz. Rex, Lex, & Rescripta regis, the King, the Law and the Kings writs. The Law is the rule, but it is mute; The King iudgeth by his Iudges, and they are the speaking Law, Lex loquens. The processe and the execution which is the life of the Law consisteth in the Kings writs. So as he that is out of the protection of the King cannot be aided or protected by the Kings Law, or the Kings writ, Rex tuetur legem, & lex tuetur jus. (l) Besides men attainted in a Præmunire, euery person that is attainted of high treason, petit treason, or felony is disabled to bring any action for hee is * Extra legem positus, and is accounted in Law Ciuiliter mortuus.

(l) 4.E.4.8. 1.E.4.1.b. 30.E.3.4. 8.Eliz. Dier.245. * Mich.9.E.3. coram rege, Rot.84.Warw.

It is to be vnderstood that there is a generall protection of the King, whereof Littleton here speaketh, and this extends generally to all the Kings loyall subiects, Denizens and Aliens within the Realme, whose offences haue not made them vncapable of it as before it appeareth, And there is a particular protection by writ, which is one of the Kings writs that Littleton here speaketh of. This particular protection is of two sorts, one to giue a man an immunity or freedome from actions or suites; the second for the safety of his person seruants and goods, lands and tenements whereof he is lawfully possessed from violence, vnlawfull molestation or wrong. The first is of right and by Law, the second are all of grace (sauing one) for the generall protecton implyeth as much. Of the first sort some are Cum clausula (volumus) so called because the writ hath this word (volumus) in it, viz. Volumus quod interim sit quietus de omnibus placitis & quærelis, &c. And the other a protection Cum clausula (nolumus) so called for the like reason. Of protections Cum clausula (volumus) for staying of pleas and suites there be foure kindes, viz. Quia profecturus (so called by reason they are part of the words of the writ) 2. Quia moraturus (so named for distinction for the like cause) 3. Quia indebitatus nobis existit of the matter. 4. When any sent into the Kings seruice in warre is imprisoned beyond sea. The former are for staying of actions and suites in generall. The third is for staying of suites of the suctiect for debts & duties due by the Kings debtor to them. Of the fourth you shall reade hereafter in this place. For the former two, these nine things are to be obserued. First, for what cause they are to be granted. 2. for what persons they are allowable. 3. A threefold time is to be considered, viz. the time of the purchase of them, the time of the continuance of them, and the time when they shall be cast. 4. In what place the seruice is to be performed. 5. In what actions these protections are allowable. 6 Vnder what seale and to whom they are directed. 7. Who is to allow, or disallow of them. 8. By whom they are to be cast and in what manner. 9. How vpon iust cause they may be repealed or disallowed. I must but point at these matters to make the studious reader capable of them and referre him to the bookes and other Authorities at large being excellent points of learning. As to the first, it is of two natures, the one concerne seruices of war as the Kings souldier, &c. the other wisedome and counsell, as the Kings Imbassador or Messenger Pro negotijs regni, both these being for the publique good of the Realme, priuate mens actions and suites must be suspended for a conuenient time, for, Iura publica anteferanda priuatis, and againe, jura publica ex privatis promiscue decidi non debent. (a) And the cause of granting of the protection must be expressed in the protection, to the end it may appeare to the Court that it is granted Pro negotijs regni & pro bono publico, (b) or as some others say, Pur le common profit del realme. And Britton saith Nostre seruice, sicome estre en nostre force, & le defence de nous & de nostre people, &c. * A man in execution in salua custodia shall not be deliuered by a Protection.

Prote- { Generall. / Particular.
Of the Generall, vid. lib.7. Caluyns case per totum.

(a) 39.H.6.39. 3.H.6. tit. Protection.2. 13.R.2. ca.16.
(b) Mirror,cap.3.§. Britton,fo.281. Fleta lib.6. cap.7.8.&c. Bracton * 5.Mariæ Dier, 162.

(c) To the second these Protections are not allowable only for men of full age, but for men within age, and for women, as necessary attendants vpon the Campe, and that in three cases, Quia lotrix, seu nutrix, seu obstetrix.

(c) 19.H.6.51. 30.E.3.21 F.N.B.28.l.11.E.3 Rot part 3.part for the Countesse of Warw.

(d) Corporations aggregate of many are not capable of these two protections either Profecturæ, or Moraturæ because the Corporation it selfe is inuisible, and resteth only in

(d) 30.E.3.1.21.E.4.36. 21.E.3.27.

consideration of Lawe. (e) Protection for the Husband shall serue also for the wife.

(f) Albeit the Voucher, Tenant by rescett, prier in aide or garnish be no parties to the writ, yet before they appeare a Protection may be cast for them, because when the Demandant grants the Vouchor or rec. it in iudgement of Law they are made priuie, but if the Demandant counterplead the Vouchor or rescett, then vntill it be adiudged for them, and so priuie in Law, a Protection cannot be cast for them. And so it is of the garnishee, a protection may be cast for him at the day of the retorne of the Scire fac: (g) No Protection can be cast for the Demandant or Plaintife, because the Tenant or Defendant cannot sue a resommons, or a re-attachment, but the Plaintife only that sued out the sommons or Attachment, &c. must sue also the resommons or re-attachment. And so it is of an Actor in nature of a Plaintife, &c. as the Garnishee after appearance, and an auowant, and the like. (h) An officer of the Kings rescett or any other officer in any Court of Record, whose attendance is necessary for the Kings seruice or administration of Iustice being sued, cannot haue a Protection cast for him.

(i) In euery action or plea reall or mixt against two (where a Protection doth lye) a protection cast for the one doth put the plea without day for all. So it is in debt, detinue and account. But in trespasse, or any Action in nature of trespasse, which is in law seuerall, where euery one may answer without the other, there a Protection cast for the one shall serue for him only, vnlesse they toyne in pleading, or if they plead seuerall pleas, and one Venire facias is awarded against all, there a Protection cast for one, shall put the plea without day for all, and therefore in former times, the Plaintife vsed to sue out seuerall Venire fac' in those cases for feare of a protection, &c.

(k) As to the threefold time. First, a Protection profecturæ regularly must not be purchased hanging the plea, but this fayleth when he goeth in the Kings seruice in a Voyage royall, and that is twofold, either touching warre, and that only is when the King himselfe or his Lieutenant, that is prorex goeth, or when any goeth in the Kings Ambassage Pro negotio regni, or for the marriage of the Kings daughter or the like, this also is called a Voyage royall. But a protection Moratur may be purchased, and cast pendente placito.

(l) Regularly a protection cannot be cast, but when the partie hath a day in Court, and when if he made default, it should saue his default: therefore when Execution is to be granted against body, lands or goods, no protection can be cast because the Defendant hath no day in Court. If a protection be cast at the Nisi prius for one, if before the day in banke it be repealed by Innotescimus, yet because it was once well cast, it shall saue his default, but if the protection be disallowed, either for variance, or that it lay not in the action or the like, there it shall turne to a default.

If a man hath a protection, and notwithstanding pleade a plea, yet at another day of continuance, after that a protection may be cast, so at a day after an Exigent, but after appearance he cannot cast a protection in that terme vntill a new continuance be taken.

(n) Thirdly, No protection either Profecture or Morature, shall indure longer, then a yeare and a day next after the teste or date of it. And so it is of an Essoigne de seruice le Roy. If a protection beare teste 7. die Ianuarij And haue allowance pro vno anno, the resummons, re-attachement or regarnishment may be sued 8. Ianuarij the next yeare, and yet that is the last day of the yeare.

And where Britton treating of an Essoigne beyond the Græcian Sea in a Pilgrimage, &c. saith thus, (o) Ascun gent nequident se purchasent nous letters de protection patents durable a vn an ou a 2. ou a 3. ans, & ialameyns font attorneys generals, ausi per nous letters patents: & ceux font bien & sagement, car nul grand Seignior ne chiualier de nostre realme ne doit prender chemyn sauns nostre conge, car issint poet le realme remainer disgarny de fort gente.

Three things are hereupon to be obserued, First, that this was a protection of grace, whereof more shall be said hereafter. Secondly, that it was for safetie of the great men of the realme, and that they should make generall Attornies, so as no actions, or suits should be therby stayed. Thirdly, (by the way) that great men could not passe out of the Realme without the Kings licence. (p) A protection granted to one, &c. vntill he returned from Scotland, was disallowed for the incertaintie of the time.

(q) To the fourth, the protection aswell Morature as Profecture must bee regularly to some place out of the Realme of England, and that must be to some certaine place, as super salua custodia Calicæ, &c. and not to Carlisle or Wales, which are within the Realme, or to the like. But it may be to Ireland or Scotland, because they are distinct Kingdomes, or to Callice, Aquitaine, or the like, but a protection, Quia moratur super altum mare will not serue, not only, because (as some thinke) that mare non moratur, but for the incertaintie of the place, and for that a great part of the Sea is within the Realme of England.

(r) To the fifth. In some Actions, Protections shal not be allowed by the Common Law, and in some actions they are ousted by Act of Parliment, Actions at the Common Law, as all Actions that touch the Crowne as Appeales of Felonie, and appeales of Mayhem. (s) So when

(c) 35.H.6.3.43.E.3.23. 48.E.3.7. 4.H.5. protection. 107.
(f) 45.E.3.protect.37. 3.H.6 18 30.8.H.6.16.9.H.6.36. 40 E.3.18.32 E.3.protect. 54.21.E.3.14.H.4.16. 45.E.3.tit.protect.40. 14.E.3.protect.66.
(g) 24.E.3.26.47.E.3.5. 5.H.5.5 38.E.3.1.F.N.B. 28.g.20.R.2.protect.106. 22.H.6.28 9.H.6.36. 43.E. 3.36.17.E.3.24.25.E.3.43 24.E.3.26.13.E.3.protection.71.14.E.3.ibid.65.63. 20.E.3 ibid 84.
(h) 7.H 4.3.a.
(i) 19.E.3.protect.80.81. 31.E 3.ibid.55.16.E.2.tit. 77 13.E.3.ibid.70.41 E.3. ibid.95.41.E.3.32.42 E.3 9. 5.H.5.7.3.H.4.15.2.R.2. protect.45.43.E.3.ibid 31. 2.H.6.22.21.H.6.41. 38.E. 3.12.7.H 6.21 33.E.3.protect.116.4.H.4.a. 29.E.3. 41.45.E.3.24.28.11.E.4.7. F.N.B.28.k.
(k) 3.H.6.protect.2.39.H. 6.39.44.E.3.12.13 R.2.ca. 16. 3.H.4.16.11.H.4.7. 7.E.4.27.28.H.6.1. 17.H.6.protect 56. 10.E.3.54.13.E.3.amerciament 18. Lib.7.fol.7.8. Calvins case. 13.R.2.cap 16.
(l) 4.H.6 22.17.E.3.76. 33.E.3.tit.protect.115. 34.E.3.ibid.124. 27.E.3.79 29.E.3.protect.85.88.. 2.E. 4.15.19.E.3.protect.82.79. 13.E.3.ibid.72.9.E.3.21. 3.H.6.55.4.H.6.21. 11.H. 6.14.14.H.6.22.21.H.6.10 27.H.6.4.28.H.6.1.35.H.6 58.44.E.3.2.16.48.E.3.8. 7.H.4.5.14.H.4.23. 27.E.3.78.
(m) 22.E.3 4.16.E.3, protect.47. 44.E.3 16..3E.3 amerciament.18. 34.E.3. Protection.123.
(n) 39.H.6. 39.F.N.B. fol.28. Fleta.lib.6.cap.8. Temps E.1.grand cape 26.
(o) Britt fo.282.283.& 280. Fleta lib.6.ca.8.accord.

(p) 1.E.3.25.
(q) Lib.7.fol.8. Calvins case. 7.E.4.29. F.N.B.38.c.g.h. 7.H.4.14.19.H.6.35. 38.H.6.3.32.H.6.3.R.2. Rot. Parliam.nu.21. 22.E.4 protect.18. 8.R.2.ibid.125. 11.H.4 57. Regist.indic.14. 36.H.6.tit.protect.27. 6.R. 2.ibid 14. Regist.orig.88.sæpe.
(r) Bract lib.5.139.140. Britton.181. Fleta lib.6.cap. 7.8.&c. 14.E.2.protect.109 34.E.3.ibid.122. 19.E.3. ibid.7-8. 33.E.3.ibid.99. 21.E.3.13.
(s) 10.H.6. protect.105.

where the King is sole partie no protection is to be allowed in like manner in à decies tantum, where the King and the subiect are Plaintifes, but in late Acts of Parliament Protections in personall actions are expresly ousted. A Protection may be cast against the Queene the Consort of the King.

In a Writ of Dower vnde nihil habet, no Protection is allowable, because the Demaundant hath nothing to liue vpon. Otherwise it is in a Writ of right of Dower. Likewise in a Quare impedit, or assise of Darreine presentment a Protection lieth not, for the eminent danger of the laps. Neither lieth a Protection in an Assise of Nouel disseisin, because it is festinum remedium, to restore the Disseisee to his freehold, whereof he is wrongfully and without iudgement disseised. (u) In a quare non admisit, a Protection is not allowable because it is grounded vpon the quare impedit, and the like in a Certificate vpon an assise for the like reason, and sic de similibus. A Protection, quia profecturus, is not allowable (as hath beene said) in any Action commenced before the date of the Protection, vnlesse it bee in a Voyage Royall. (w) In Infant is vouched, and at the Pluries venire fac, a Protection was cast for the Infant, and disallowed, because his age must be adiudged by the inspection of the Court.

(x) By Act of Parliament no protection shall be allowed in an attaint. (But at the Common Law a Protection for one of the petite Iurie had put the plea without day for all) nor in an Action against a Gaoler for an escape, nor for victuals taken or bought vpon the voyage or seruice, nor in Pleas of Trespasse, or other contract made or perpetrated after the date of the same Protection.

(y) In a Writ of Error brought by an Infant vpon a fine leuied, the Plaintife sued a Scire facias against the Conusee, for whom a Protection was cast, and the Court examined the age of the Plaintife, and by inspection adiudged him within age, and recorded the same, and then allowed the Protection, and this can bee no mischiefe to the Plaintife, whereupon it followeth, that albeit the Plaintife dieth afterwards before the fine be reuersed, yet after his age adiudged and recorded) his heire shall in that case reuerse the fine for the nonage of his Ancestor. (a) And so it was resolued in the case of Kekewiche in a Writ of Error brought by him by the opinion of the whole Court of the Kings Bench, otherwise it is, if the Plaintife dyeth before his age inspected.

(b) Note in iudiciall Writs, which are in nature of Actions, where the partie hath day to appeare and plead, there a Protection doth lie, as in Writs of Scire facias vpon Recoueries, Fines, Iudgements, &c. albeit by the Statute of W.2. Essoignes and other delayes be ousted in Writs of Scire facias, yet a Protection doth lie in the same. So it is in a Quid iuris clamat and the like. But in Writs of Execution, as habere facias seisinam, Elegit, Execution vpon a Statute, Capias ad satisfaciendum, Fieri facias and the like, there no Protection can bee cast for the Defendant, because he hath no day in Court, and the Protection extendeth only ad placita & querelas, and must be allowed by the Court, which cannot bee but vpon a day of appearance.

(c) In a Writ of Deceit brought against him that obtained and cast a Protection vpon an vntrue surmise in delay of the Plaintife, that Protection is allowable. In an Action brought vpon the Statute of Labourers a Protection doth lie, & sic de similibus.

(d) To the sixth, no Writ of Protection can be allowed, vnlesse it bee vnder the great Seale, (*) and it is directed generally.

(e) To the seuenth, the Courts of Iustice where the Protection is cast, are to allow, or disallow of the same, bee they Courts of Record or not of Record, and not the Sherife, or any other Officer or Minister.

(f) To the eighth, the Protection may be cast either by any stranger, or by the partie himselfe, an Infant, Feme Couert, a Monke or any other may cast a Protection for the Tenant or Defendant: and this difference there is when a stranger casteth it, and when the Tenant or Defendant casteth it himselfe. (g) For the Defendant or Tenant casting it, hee must shew cause wherefore he ought to take aduantage of the Protection, but an estranger, need not shew any cause, but that the Tenant or Defendant is here by Protection.

(h) As to the ninth, A Protection may be auoyded three manner of wayes: First, vpon the casting of it before it be allowed. Secondly, by repeale thereof after it bee allowed: by disallowing of it many wayes, as for that it lyeth not in that Action, or that he hath no day to cast it, or for materiall variance betweene the Protection and the Record, or that it is not vnder the great Seale, or the like. (i) Thirdly, After it be allowed by Innotescimus, as if any tarrie in the Countrie without going to the seruice for which hee was retained, ouer a conuenient time after that he had any Protection, or repaire from the same seruice, vpon information thereof to the Lord Chancellor, he shal repeale the Protection in that case by an Innotescimus. But a Protection shall not be auoyded by an auerment of the partie in that case, because the Record of the Protection must be auoyded by matter of as high nature.

(k) There

(t) 39.H.6.39. 43.E.3.6.& 32.27.H.6.1 F.N.B.28. 17.E.3.23.lib.4.fol.35.Beconis case. Bract.lib.5.fol. 139.140.

(u) 13.E.3.tit.protection.53 12.E.3.ibid.69. 31.E.1.ibid.112.

(w) 19.E.2.protect.111. 32.E.3.ibid.54.

(x) 23.H.8.cap.3. 34.E.1. protection 38. 7.H.4.cap.4. 1.R.2.cap.8.

(y) 21.E.3.24.31.E.3. protect.97. l.5.E.4.50 35.H.6. 43.46 8.E.4.8. 17.E.3.22. 13.E.3 protect.73.

(a) Pasch.12.Ia.Regis, in the Kings Bench.

(b) 13.E.3.protect.72.Fleta. lib.2 cap.12. 40.E.3.18. 48.E.3.18.19. 37.H.6.32. 21.E.4.19.15.H.7.8 47.E.3 5.17.E.3.68.14.E.3. protect.64.W.2.cap.45.

(c) 20.E.3.protect.83.

(d) 35.H.6.2.Artic super Cart.6.46.E.3. section 19.

(*) Lib.2.fol.1. Lanes case. Lib.8 fol.68. Trallops case. 20.H.6.25. 2.E.4.4. 38.H.6.23.

(e) 43.E.3. protect.96.

(f) 21.E.4.18.

(g) 38.H.6.23.

(h) 44.E.3.12.47.E.3.6.

(i) 12.R.2.ca.16.11.H.4.70 7.H.6.22.22.H.6.50. 30.H.6.3.19.H.6.35. 21.E.4.20. 1.H. .6.42.E.3 9.44.E.3 2.39.E.3.45. 20.E.3.protect.86. 34.E.3.ibid.119.

(k) 44.E.3.4.12.47.E.3.6. 34.E.3.*protect*.119. 28.H.6. 3. 34.H.6.22. 30.H.6.3. 32.H.6.4.

(k) There is a clause in the Protection to this effect. Præsentibus minime valituris, si contingat ipsum, &c. à custodia castri prædicti recedere. Or si contingat iter illud non arripere, vel infra illum terminum à partibus transmarinis redire. Whereupon there be two conclusions to be obserued.

First, That though the Protection be allowed by the Court for a yeare, yet if it be repeald by an Innotescimus, that the resommons or Re-atatchment shall be granted vpon the Repeale within the yeare, for the Protection that was allowed had the said clause in it. And of that opinion be our latter Bookes, and the repeale by Innotescimus should serue for little purpole, if the Law should not be taken so.

Secondly, That albeit hee that had the Protection either Morature or Profecture, returne into England, and haply be arrested and in Prison, yet if he came ouer to prouide Munition, Habiliments of warre, victuals or other necessaries, it is no breach of the said conditionall clause, nor against the Act of 13 Richard.2. for that in iudgement of Law comming for such things as are of necessitie for the maintenance of the warre, morarur, according to the intention of the Protection and Statute aforesaid. And thus much of the two first Protections, Cum clausula volumus, Profecture and Morature.

(l) *Registrum*.281.*b*. *F.N.B*.28.*b*. 33.*H*.8.*ca*.29.*in the præamble* 41.*E*.3.*tit.execution*.38. 18.*E*.3.*ibid*.56.27.*E*.3.88.*b*. 4.*E*.4.16. 3.*Eliz*. *Dier*.197. *Rot.Pat*.27.*E*.3.*part*.1.*m*.2 (m) 25.*E*.3.*cap*.19.

(l) As to the third Protection Cum clausula volumus, the King by his Prerogatiue regularly is to be preferred in payment of his dutie or debt by his Debtor before any subiect, although the Kings Debt or dutie be the latter, and the reason hereof is, for that Thesaurus Regis est fundamentum belli & firmamentum pacis. And thereupon the Law gaue the King remedie by writ of Protection to protect his Debtor, that hee should not bee sued or attached vntill he paid the Kings debt, but hereof grew some inconuenience, for to delay other mens their suits, the Kings Debts were the more slowly paid. And for remedie thereof (m) it is enacte by the Statute of 25 E.3. that the other Creditors may haue their actions against the Kings Debtor, and to proceed to Iudgement, but not to Execution vnlesse hee will take vpon him to pay the Kings Debt, and then he shall haue Execution against the Kings Debtor for both the two Debts.

(n) 41.*E*.3.15. 17.*E*.3.73. 29.*E*.3.13. 4.*E*.4.16.

This kind of Protection hath (as it appeareth) no certaine time limited in it. But in some cases the subiect shall be satisfied before the King, (n) for regularly whensoeuer the King is intitled to any fine or dutie by the suite of the partie, the partie shall bee first satisfied, as in a Decies tantum. And so if in an Action of Debt, the Defendant denie his Deed, and it is found against him he shall pay a fine to the King, but the Plaintife shall be first satisfied, and so in all other like case. And so it is in Bils preferred by subiects in the Starchamber there costs and dammages (if any be) shall be answered before the Kings fine as it is daily in experience.

(o) *Regist. sapi*. *F.N.B*.28.*C*.

The fourth Protection, Cum clausula volumus, is when a man sent into the Kings Seruice beyond Sea is imprisoned there, so as neither Protection, Profecture, or Morature, will serue him, and this hath no certaine time limited in it, (o) whereof you shall reade at large in the Register and F.N.B.

(p) *Vide lib*.7.*fol*.8.9. *Calvins case*.

(p) Now are we at length come to Protections, Cum clausula Nolumus, All which sauing one are of grace, and as hath beene said are implyed vnder the generall Protection, for as Fitzherbert sayth euery loyall subiect is in the Kings Protection. Of these Protections of grace, you shall not reade much in our yeare Bookes, because they stayed no Actions or Suites (q) but the diuers formes, of these you shall reade at large in the Register, and F.N.B. which were to long and needielle to be here recited.

(q) *Register*.280 *&c*. *F.N.B*.29.*A.B.C.D.E*. *F.G.H*. *Register*.280. *Statut.de* 14.*E*.3. *F.N.B*.30.*A*.

The Protection Cum clausula nolumus, that is of right is that euery spirituall person may sue a Protection for him and his goods, and for the fermors of their lands and their goods, that they shall not be taken by the Kings Purueyor, nor their carriages or chattels taken by other Ministers of the King, which writ doth recite the Statute of 14.E.3.

Of these Protections I cannot say any thing of mine owne experience, for albeit Queene Elizabeth mayntayned many warres, yet she granted few or no Protections, and her reason was, that he was no fit subiect to be imployed in her seruice, that was subiect to other mens actions, lest she might be thought to delay Iustice.

Section 200.

Entre & professe en Religion.

Cl. Et v. est, vn home q̃ est enter a profesſe en religion: Si tiel suist

The fifth is, where a man is entred and professed in Religion, if

ſuiſt vn action, le tenant ou defendant poit monſtrer, que tiel eſt enter en religion en tiel lieu, en lozder de Saint Benet, & la eſt moigne profeſſe, ou en lozder des Friers preachers, ou minozs, & la eſt frere profeſſe, & iſſint des auters ozders de religion, &c. & demaundera iudgement ſil ſerra reſpondue. Et la cauſe eſt, pur ceo que quant vn home entra en religion, & eſt profeſſe, il eſt mozt en ley, & ſon fits ou auter couſin maintenant luy enheritera auſſybien ſicõe il fuit mozt en fait. Et quant il entra en Religion il poit faire ſon teſtament, & ſes executozs, les queux executozs aueront vn action de det due a luy deuant lentre en Religion, ou auter action que executozs poient auer ſicome il fuit mozt en fait. Et ſil ne fait ſes executozs quant il entra en religion, donques Lozdinarie poit committ ladminiſtration de ſes biens a auters homes, ſicome il fuit mozt en fait.

ſuch a one ſue an action, the Tenant or Defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the Order of Saint *Benet*, and is there a Monke profeſſed, or in the Order of Friers, Minors and Preachers, & is there a brother profeſſed, and ſo of other Orders of Religion, &c. and aske iudgement if hee ſhall bee anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, hee is dead in the Law, and his Sonne or next Couſin incontinent ſhall inherit him, as well as though hee were dead indeed, and when he entreth into Religion, hee may make his Teſtament and his Executours, and they may haue an action of debt due to him before his entry into Religion, or any other action that Executors may haue, as if he were dead indeed. And if that hee make no Executours when he entreth into Religion, then the Ordinarie may commit the Adminiſtration of his goods to other, as if he were dead in deed.

(a) It is to be obſerued that a mã doth enter into Religion at his firſt comming, and liueth vnder obedience, but hee is not profeſſed till a yeare be paſt, or ſome time of probation. And he is ſaid to be profeſſed when he hath taken the habit of Religion, & vowed three things, Obedience, Wilfull Pouertie & perpetuall Chaſtitie. And therefore our Author ſaith here enter & profeſſe.

(a) Br. tit. lib. 5. fo 415. 421. Britt. ca. 22 fo. 39. Fleta, lib. 6. ca. 41. 5. E. 2. tit. nonabil. 26. 3. H. 6. 24. 1. E. 3. 9. 7. H 4. 2. Doctor & Stud. 141. 21. R. 2. iudgement, 263. 11. R. 2. ibid. 107.

¶ *En Lorders des Freres Preachers, ou* (b) *Minors.* It appeareth in our Bookes that of Friers there were foure Ozders. viz. Minors, Auguſtins, Preachers and Carmelites, and the Franciſcani, Capuchini, and Obſeruantes are included vnder the title of Minors, and they were called Obſeruants, becauſe they bee not Conuentuall or ioyned together in a Brotherhood, but liue ſeparately, and bound themſelues to obſerue more ſtrictly the rights of their Ozder. (c) Cum quis ſemel ſe religioni contulerit renuntiat omnibus quæ ſeculi ſunt, habita diſtinctione, vtrum habitum probationis ſuſceperit, vel habitum profeſſionis.

(b) 4. H. 4. ca. 17. 25. H. 8. ca. 12.

(c) Bracton, fo. 421. b.

¶ *Il eſt mort en ley.* Ciuiliter mortuus, oz mortuus ſeculo. (d) There is a death in deede, and there is a ciuill death or a death in Law, Mors ciuilis and mors naturalis, as here it appeareth, and therefore to ouſt all ſcrupies, Leaſes for life are euer made during the naturall life, &c. If the father enter into Religion, then ſhall his ſonne and heire haue an aſſiſe of Mordanceſter and the writ ſhall ſay, (e) Si W. pater, &c. die quo obijt habitum religionis aſſumpſit, in quo habitu profeſſus fuit vt dicitur.

(d) Bracton, fo 301. 426. Britton. fo. 226. 250. 251. Fleta, lib. 6. ca. 41.
(e) F. N. B. 196. 5. E. 4. 3.

¶ *Auxibien*

¶ *Auxibien come il fuit mort en fait.* But yet to three purposes, profession, that is, the ciuile death, hath not the effect of a naturall death.

First, This ciuile death shall neuer derogate from his owne grant, nor be any meane to auoyd it. And therefore if Tenant in Taile maketh a feoffement in fee, and entreth into Religion, his issue shal haue no Formedon during his life, because that should be in derogation of his owne Grant, and be a meane to auoyd the same.

(f) Secondly, It shall neuer giue her auaile, without whole consent hee could not haue entred into Religion, and therefore his wife after his ciuile death shall not bee endowed, vntill his naturall death. But if the wife, after her husband hath entred into Religion, alien the Land which is her owne right, and after her husband is deraigned, the husband may enter and auoid the alienation.

Thirdly, It shall not worke any wrong or preiudice to a stranger that hath a former right, and therefore if the Disseisor entreth into Religion, and is professed, so as the land discends to his heire, yet this discent shall not tolle the entrie of the Disseisee.

(g) A woman cannot be professed a Nunne during the life of her husband: but some do hold a diuersitie, (h) that ante carnalem copulam, the husband or wife may enter into Religion without any consent, but post carnalem copulam neither of them can without consent of other. (i) But if a man holdeth lands by Knights seruice, and is professed in Religion, his heyre within age, he shall be in ward. (k) If I be disseised, and my brother releases with warranty, and is professed in Religion, and the warrantie discendeth vpon me, this warrantie shall binde me, because I am his heire, and such Inheritance as my brother had shall discend vpon me. (l) And if one Joyntenant be professed in Religion, the land shall suruiue to the other. If a man or a woman be professed in Religion in Normandie, or in any other forreine part, such a profession shall not disable them to bring any Action in England, because it wanteth triall, but they must be professed in some house of Religion within this Realme, for that may be tried by the Certificate of the Ordinarie, so as of forreine professions the Common Law taketh no knowledge. (m) And yet in some case one that is professed in Religion within the Realme shall haue an Action, as if he be made an Executor, or if he be an Administrator, he shal maintaine an Action not in his owne right, but in right of the Dead.

(n) If a Monke be made a Bishop, or a Parson, or a Vicar, he shall haue an Action concerning his Bishoprick, Parsonage, or Vicarage, & sic de similibus.

(o) And if a Monke be Farmer of the King, yeelding a rent, he shall haue an Action concerning that Farme. And albeit Littleton speaketh generally of one that is professed in Religion, yet must it not be vnderstood of the Soueraigne or Head of the religious house, as of the Abbot, Prior, or the like, (*) for albeit they be professed in Religion, yet by the policie of the Law, they are persons able to purchase, and to implead, and to be impleaded, to sue, and to be sued for any thing that concernes the house of Religion, for otherwise the house might be preiudiced, and other men also of their lawfull Actions. And this is the antient Law of England, as it appeareth in these words, (p) Des biens des gents de Religion appent la action al Chief en son nosme pur luy & son Couent. But what if a Monke, &c. were beaten, wounded, or imprisoned, &c. Doth the Law giue no remedie therefore? Yes verily, (q) for in that case the Abbot and the Monke shall ioyne in an Action against the wrong doer, and if the writ be, Ad damnum ipsius Prioris, the writ is good; and if it be ad damnum ipsorum, it is good also. So if a Monke be by conspiracie falsely and maliciously indicted of Felonie and Robberie, and afterwards is lawfully acquited, his Soueraigne and he shall ioyne in a writ of conspiracie and the like. And where Littleton speaketh of a man that is professed in Religion, the same Law is of a Nunne, sanctimonialis mutatis mutandis.

(r) A wife is disabled to sue without her husband, as much as a Monke is without his Soueraigne, and yet we read in bookes, that in some cases a wife hath had abilitie to sue and be sued without her husband: (s) For the wife of Sir Robert Belknap, one of the Justices of the Court of Common Pleas, who was exiled or banished beyond sea, did sue a writ in her owne name, without her husband, he being aliue, whereof one sayd, Ecce modo mirum, Quod fœmina fert Breue Regis non nominando virum coniunctim robore Legis.

(t) King Edward the third brought a Quare impedit against the Ladie of Maltrauers, and she pleaded that she was Couert of Baron; whereunto it was replyed for the King, that her husband the Lord Maltrauers, was put in exile for a certaine cause, and she was ruled to answer.

(u) King Henrie the fourth brought a writ of ward against Sibel B. who pleaded that she was Couert Baron, &c. whereunto it was replied for the King, that her husband for a crime that he had committed against the King and the Peeres, was relegate or exiled into Gascoigne, there to remaine vntill he obtained the Kings grace: And Gascoigne chiefe Iustice, Ita assensu sociorum, awarded, that she should answer.

Sir Th Egerton Lord Chancellor, in his argument which he published apart by himselfe in Ca-

(f) 32.E.1.Dower 196. 31.E.3.Collusion 29. 33.E.3.Entre conge.58. 21.E.4.14.

(g) 5.E.4.3.a.
(h) 18.H.6.33. per Fortesc.

(i) 31.E.3.Collusion 29.
(k) 34.E.3.Garranty 71. Vid. the Chapter of Warrantie, Sect.

(l) 21.R.2.Iudgm.263.

(m) 10.E.3.511. 14.E.3. Executors 187. 5.H.7.25. 21.H.6.30. 3.H.6.24.

(n) 44.E.3.9.Nonabilitie 3. 14.H.8.16.
(o) 2.H.4.7. 8.H.5.6. 7.E.4.30. 44.E.3.4. 20.E.3.Vill.10. & Nonabilitie 9. 49.E.3.4.
(*) Bract.fo.415,416,429. Mir.c.2.§.14. 14.H.4.37.b. 5.H.7.26. Vid.Sect.296. 14.E.4.36.

(p) Mir.vbi supra.

(q) 22.Ass.87. 21.E.3.41, 42. 22.E.3.2.37.H.6.8. 32.H.6.36. Bract.l.5.f.416, 429. 13.E.3.Brē.261.22. Ed.3.2. 38.H.6.7.b. 24.E.3.24.b.45. 7.R.2.Nonabilitie 3,9.

(r) 4.H.3.Br.766.

(s) 2.H.4.f.7.a.

(t) 10.E.3.53.

(u) 1.H.4.1.b.

Caluins case De Post-Natis, demanded what former President there was for the warrant of the Lady Belknaps case in 2.H.4.7. which occasioned me to search, and vpon search I found that the like Iudgement had bin giuen before at the Parliament holden in Cro Epiph', An.19. Edw.1. where the case was, That Thomas of Weyland being abiured the Realme for Felonie, in the yeare before, Margerie de Mose his wife, and Richard sonne of the sayd Thomas, exhibited their petition of Right into the Parliament, for the Manner of Sobbir, wherein her husband had but an estate for life ioyntly with her, & the inheritance in Richard the sonby Fine. The Earle of Glouceſter, Lord of the Fee, (who claiming the land by Escheat, had taken the possession thereof) alledged, Quod non fuit iuri consonum quod aliqua fœmina intraret in aliquas terras viuente marito suo, eo quod præfatus Thomas abiurauit Regnum & adhuc viuit, & asserebat idem Comes nunquam huiusmodi casum accidisse & inde petit post multas allegationes quod possit prædictum manerium tenere vt eschaetam suam, super quo per ipsum Dominum regem præceptum fuit, quod tam Iustic' sui de vtroque Banco quam cæteri de Regno suo tam milites quam Seruientes in legibus & consuetudinibus Angliæ experti mandarentur, quod essent coram Rege & eius Consilio, &c. ad certiorandum ipsum Regem qualiter & quomodo in casu isto fuerit procedendum, & qualiter temporibus præteritis & antecessorum suorum in casibus consimilibus fieri consueuit, & interim scrutantur Recorda de consimilibus, vbi recitantur duo vel tres consimiles casus. Et quia licet prius non videbatur aliquibus iuri consonum fuisse quod vxor in vita viri secundum sanctam Ecclesiam, qualitercunque deliquisset quoad forum Regiñ, non posset nec deberet a viro suo seperari, & sic quicquid foret in possessione vxoris, conuerteretur in potestatem viri sui, & hoc manifeste imminueret contra consuetudinem Regni. Et etiam quia quidam dubitabant quod de possessionibus & bonis vxoris vir possit aliqualiter sustentari. Tamen coram Consilio Domini Regis vocatis Thesaurar' & Baronibus & Iusticiarijs de vtroque Banco concordatum est, quod prædicta Margeria rehabeat talem seisinam, &c secundum purportum finis prædict. &c. patet etiam consimile exemplum tempore Henrici patris regis.

Pl. in Parliamento 19.E.1.

Note the antient triall of difficult matters in Law.

The great authoritie of Iudiciall Records and Presidents.

A solemne resolution of the Law in this point.

I haue cited this solemne resolution the more at large, because there be many excellent things to be obserued in it: so as by that which hath beene sayd, it plainly appeareth, that this opinion concerning the habilitie of the wife of a man abiured or banished, was not first hatched by the Iudges in Henrie the fourths time. And here is to be obserued that an abiuration, that is a deportation for euer into a forreine Land, like to Profession, (whereof our Author speaketh here) is a ciuile death, & that is the reason that the wife may bring an action, or may be impleaded during the naturall life of her husband. And so it is, if by Act of Parliament the husband be attainted of Treason or Felonie, and hauing his life, is banished for euer, as Belknap, &c. was, this is a ciuile death, and the wife may sue as a Feme sole. And hereby you may vnderstand your Bookes which treat of this matter But if the husband by Act of Parliament, haue iudgement to be exiled but for a time, which some call a Relegation, that is no ciuile death. And in 8.E.2 an Abiuration is called a diuorce betweene the husband and wife. Sed opus est interprete, for by Law no Subiect can be exiled or banished his Countrie, whereby he shall perdere patriam, but by authoritie of Parliament, or in case of Abiuration, and that must be vpon an ordinarie proceeding of Law, as it was in this case of Weyland.

8.E.2 Coron.425.

So resolued in Parliament, vpon the making of the Statute of 35.Ed.ca.1.
Exilium Hugonis de Spencer patris & filii tempore E.2.
31.E.1.Cui in vita 31.

Another example we haue in our Bookes to this effect: If the husband had alienes the Land of his wife, and after had committed felonie and beene abiured the Realme, the wife shall haue a Cui in vita in his life time, agreeable with the sayd resolution in Parliament, for that the abiuration was a ciuile death.

See in the Register, a woman was banished out of the Towne of Calice for adulteris, by the Law or custome of that place, and there appeareth Carta pardonationis pro muliere bannita. Sed nos non habemus talem consuetudinem.

Regist.fo.312.b.

(a) But by the Common Law, the wife of the King of England is an exempt person from the King, and is capable of lands or tenements of the gift of the King, as no other Feme couert is, and may sue and be sued without the King, for the wisedome of the Common Law would not haue the King (whose continuall care and studie is for the publique, & circa ardua Regni) to be troubled and disquieted for such priuate and pettie causes: so as the wife of the King of England is of abilitie and capacitie to grant and to take, to sue and be sued as a Feme sole by the Common Law.

(a) Vide in my Preface to the fifth booke, This was Law before the Conquest.
10.E.3.27.b.508. 30.E.3.5. 18.E.3.1. 22 E.3.21. 49.E.3.4. 49.Ass.8. 11.H.4.67. 14.Ed.3.Voucher 110. 20.E.3.Nonabil.9. 31 E.3.Quar.Imp.146. 3.H.7.14.19 H.6.2. 28.H.6.13. 7.H.7.7.a. 26.H.6.Addic R.724. Flet.l.2.ca.63.in Fine. Pl.Com.231.Stanf.Prer.10.b.

(b) And such a Queene hath many prerogatiues, as she shall find no pledges, for such is her dignitie, as she shall not be amerced.

(b) 18.E.3.2.33.E.3.Briefe 916. F.N.B.101.a.

The Queene nor the Kings sonne are restrained by the Statute of 1.H 4. cap.6. concerning grants by the King.

(c) In a Quare impedit brought by her, some say that Plenartie is no plea, no more than in the case of the King.

(c) 18.E.3.32.24.E.3.35. 75.

(d) If any Bailife of the Queenes bring an Action concerning the Hundred, he shall say, In contemptum Domini Regis & Reginæ.

(d) 32.E.3.Brif.346. 9.E.3.33.

The Queene shall pay no Tolle.

(e) F.N.B.235.A.

(e) If the Tenant of the Queene alien a certaine part of his tenancie to one, and another part to another, the Queene may distraine in any one part for the whole as the King may doe; but other Lords shall distreyne but for the rate, and therefore where the Queene is distreyneth, there lyeth a writt De onerando pro rata portione.

(f) F.N.B.1.F.

(f) The writt of right shall not be directed to the Queene no more then to the King, but to her Bailike, otherwise it is when any other is Lord.

(g) 14.E.3.Voucher,110. 21.E.3.53. 22.E.3.3.b. 17.E.3.65. 10.E.3.17. 5.E.3.4. 15.E.3. Aide del Roy 66. 10.E.3.18. 26.H.6. Aide le Roy 24.

(g) In case of aide pryer of the Queene, it is Domina regina inconsulta, and the cause of the aide pryer shall not be Counterpleaded no more than in the Kings case. And see where the aide shalbe granted of the King and Queene, and where of the Queene only, and she of the King.

(h) 21.E.3.13. 34.E.3. Protect.122. 11.H.4.67.b.

(h) But a Protection shall be allowed against the Queene, but not against the King, neither shall the Queene be sued by petition but by a Præcipe.

(i) 30.E.3.5.

(i) The Queene is not bound by the statute of Merlebridge for retuing a Distresse into another County.

(k) Le.Cas. de 25.E.3. de Prodicionibus.

(k) If any doe compasse the death of the Queene, and declare it by any overt fact, the very intent is treason, as in the case of the King.

(l) Rot. Parliam. 8.H.6.nu.7.

(l) No man may marry the Queene Dowager without the Kings licence. But let us now returne to Littleton.

¶ *Il poet faire son testament & ses executors, &c.* (m) If A. be bound to the Abbot of D. A. is professed a Monke in the same Abby and after is made Abbot there, he shall have an action of debt against his owne Executors.

(m) 4.E.4.25. 6.E.4.4. 45.E.3.10.a. 18.E.4.19. 22.H.6.5. 5.H.7.25.b.

¶ *Donques lordinary poet commit administration, &c. sicome il fuit mort en fait.* (n) Note the statute of 31.E.3.ca.11. that giueth actions to the Administrators speaketh of a man that dies intestate, which by the Authority of Littleton extendeth aswell to a ciuill death as to a naturall.

(n) Pl.Com.280.281. Greisbrookes case.

Sect. 201.

¶ *Excommenge, excommunicatus, excommunicatio.* (a) Sicut quis poterit habere lepram in corpore, ita & in anima. Excommunicato interdicitur omnis actus legittimus, ita quod agere non potest nec aliquem convenire, licet ipse ab alijs possit conveniri.

(a) Bracton, lib.5.fo.415. 426.427 Flet.lib.6.ca.44. Britton, ca.49 fo.125.

Excommunicatio est nihil aliud quam censura a Canone vel judice Ecclesiastico prolata & inflicta priuans legitima communione Sacramentorũ, & quandaque hominum.

b F.N.B.64.F.

b It is deuided into the greater and the lesser. Minor est per quam quis à Sacramentorum participatione conscientia vel sententia arceatur. Maior est quæ non solum à Sacramentorum verum etiam fidelium communione excludit, & ab omni actu legittimo separat & dividit, but either of them both disableth the party.

(b) Bracton,426.b.ca.

(b) Cum excommunicato autem nec orare nec loqui nec palam, nec abscondite, nec vesci, licet exceptis quibusdam personis. But euery Excom-

¶ Et vi.est, lou vn home est excommenge per la ley de saint Esglise, & il suist vn action real ou personal, le tenant ou defend. poit plede que celuy que suist est excommenge, & ô ceo couient mẽe lett de Leuesqz south son seale, testmoignant lexcommengemẽt, & demaundera iudgemẽt sil serra respondue, &c. Mes en cest cas si le demandant ou plaintife ceo ne poit dedire, le bẽe nabatera my, mes le iudgement serra, que le tenant ou defendant alet quite sans

THe vi.is, where a man is excõmunicated by the law of holy Church, & he sueth an action reall or personall, the tenant or defendant may pleade that he that sueth is excõmunicated & of this it behoues him to shew the Bishops letters vnder his seale, witnessing the excõmunication & ask iudgement if he shal be answered, &c. but in this case if the demandãt or plaintife cannot deny it, the writ shall not abate, but the iudgement shall be, that the tenant or defendant shall goe quite without day, for

iour,

tour, pur ceo q̄ quant le demandant ou plaintife ad purchase les letters de absolution, & ceux sont monstres a le court, il poit aū vn resommons, ou reattachment sur son originall, solonque la nature de son bre. Mes en les auters v. cases le bre abatera, &c. si le matter mē ne poit estre dedit.

this, that when the demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a resummons or a reattachment vpon his originall, after the nature of his writ, &c. But in the other cases the writ shall abate, &c. if the matter shewed may not bee gainsaid.

munication disableth not the partie. (c) If Bailifes and Commons or any other Corporation aggregate of many bring an Action, Excommingement in the Bailifes shall not disable them, for that they sue and answer by Attorney, otherwise it is of a sole Corporation. But if Executors or Administrators be excommunicated, they may bee disabled, because they which conuerse with a person excommunicate are excommunicate also. (d) If a Bishop be defendant an excommunication by the same) Bishop against the Plaintife shal not disable him, and it shall be intended for the same cause, if another be not shewed.

(c) 30.E.3.15. 42.E.3.13. 21.H.6.30. 21.E.4.49.

(d) See Artic. Cleri. ca.7. 5.E.3.8. 8.E.3 70. 9.H.7.21. 10.H.7.8.& 9. 18.E.3.58. 28.E.3 97. 16.E.3.Excom.5. 20.E.3.ibid.9. 3.H.4.3.

¶ *Letter del euesque desouth son seale.* (e) None can certifie excommengement but only the Bishop, vnlesse the Bishop be beyond sea or in remotis, or one that hath ordinary iurisdiction, and is immediate Officer to the Kings Courts. As the Archdeacon of Richm. or the Deane and Chapter in time of vacation. (f) But in ancient time euery Officiall or Commissary might testifie Excommengement in the Kings Court, and for the mischiefe that ensued thereupon it was ordained by Parliament, that none should testifie Excommengement but the Bishop only.

(e) *Bracton lib.5.fo.426.b.* 12.E.4.15. 20.H.6.17. 20.E.3 *Excommengement* 20. 33.E.3.*ibid.*29. 44.E.3. *ibid* 23. 11.H.4.14. *F.N.B.*64.65.239. 7.E.4.14. 8.H.6.3. *Regist.*67.

(f) 11.H.4.62.*in Debt.*

(g) If a Bishop certifie, that another Bishop hath certified him that the partie which is his Diocesan is Excommunicated, this Certificat vpon anothers report is not sufficient. (h) If the Bishop of Rome, or any other hauing forreine Authority doth excommunicate any subiect of this Realme, and certifieth so much vnder his seale of Leade, this shall not disable the party. For the Common Law disalowes all Acts done in disability of any subiect of this Realme by any forraine power out of the Realme, as things not authentique whereof the Iudges should giue allowance. (i) If the Bishop certifieth the Excommunication vnder seale, albeit he dyeth, yet the Certificate shall serue (k) Si quis innodatus fuerit per excommunicationes diuersas pro diuersis delictis, & profert litteras absolutionis de vna sententia non erit absolutus quousque de omnibus alijs absoluatur.

(g) 33.E.3.*Excom.*29. *F.N.B.*65.

(h) 16 E.3.*Excom.*4. 31.E.3.*ibid.*4.& 6. 30.*Ass.*19. *E.N.B.*64. 4.H.7.15. 12.E.4.15. 14.H.4.14.

(i) 14.E.3.*Excom.*8. 8.E.2.*ibid.*26.

(k) *Hill.*14.E.3. *Coram Rege, London in Thesaur.*

¶ *Euesque.* Episcopus, a Bishop is regularly the Kings immediate Officer to the Kings Court of Iustice in causes Ecclesiasticall, And all the Bishopricks in England are of the Kings foundation, and the King is Patron of them all, (l) and at the first they were donatiue, and so it appeares by our bookes, and by Acts of Parliament and by History, and that was Per traditionem anuli & pastoralis bacculi. i. the crosier. And King Henry the first, being perswaded by the Bishop of Rome to make them electiue by their Chapter or Couent refused it. (m) But King Iohn by his Charter acknowledging the custome and right of the Crowne in former times, yet granted De communi concensu Baronum, that they should be eligible, which after was confirmed by diuers Acts of Parliament, And afterward the manner and order aswell of election of Archbishops and Bishops, as of the Confirmation of the election, and Consecration (n) is enacted and expressed in the statute of 25.H.8. But by the statutes of 31.H.8. and 1.E.6. they were made donatiue by the Kings Letters patents, both which statutes are repealed, and the statute of 25.H.8. doth yet remaine in full force and effect.

(l) 17.E.3.*fo.*40. 25.E.3. *cap.de Prouiss.* 25 H.8. *ca.*20.*lib.*3.*fo.*73.*le case de Deane & Chapter de Norwich Mast.Par.pag.*62. *Vid.Sect.*133 134.

(m) *Rot.Patent.*15. *Ianuary* 17. *Regis Iohannis. Mast.Par.pag* 252.

(n) 35.E.1.*Lestat.de Carliste.* 25.E.3.*Lestatut de Prouiss.* 13.R.2.*ca.*2. 25.H.8.*ca.*20.

And where Littleton saith, that the Bishop vnder his seale must testifie, &c. it is to bee knowne, (o) that none but the Kings Courts of record, as the Court of Common pleas, the Kings bench, Iustices of Gaole deliuery, and the like can write to the Bishop to certifie bastardy, muliertie, loyaltie or Matrimony and the like Ecclesiasticall matter: for it is a rule in Law, That none but the King can write to the Bishop to certifie, and therefore no inferiour Court, as London, Norwich, Yorke, or any other Incorporation can write to the Bishop, but (p) in those cases the plea must be remoued into the Court of Common pleas, and that Court must write to the Bishop, and then remaund the Record againe. And this was done in respect of the honour and reuerence which the Law gaue to the Bishop being an Ecclesiasticall Iudge and

(o) 2.E.3. *Coron,*160. 8.E.3.59. 24.E.3.33. 44.E.3.28. 8.R.2. *Comsons,*88.

(p) 41.E.3 42.E.3.*fo.*8. 18.E.3.61. 14.H.4.25. 3.H.4.12. *Regist.*7.4. *F.N.B.*8.E.

and a Lord of Parliament, by reason of the Baronie which euery Bishop hath. And this was the reason (a) a Quare Impedit did lye of a Church in Wales in the County next adioyning, for that the Lordships Marchers could not write to the Bishop, (b) neither shall conusance be granted in a Quare Impedit, because the inferiour Court cannot write to the Bishop. And herewith agreeth Antiquitie. (c) Nullus alius preter regem potest episcopo demandare inquisitionem faciendam. (d) And another speaking of loyaltie of marriage, Nec alius quàm rex super hoc demandaret episcopo, quod inde inquireret, episcopus alterius mandatum quam regis non tenetur obtemperare; and therewith agreeth Britton also.

(a) 8.E.3.59.36.H.6.33. tit. Quar. Imp. Brooke 109. 35.H.6.30. 11.H.6.3. 24.E.3.33.
(b) 15.E.3. Conusans 41. Iurisdict. 24. 40.E.3.2. Vide Sect.134.
(c) Bract.lib.3.106.
(d) Fleta lib.5.cap.24. Britton. fol.248.b.

¶ *Le Briefe nabatera, &c.* Abater is a French word, and signifieth Destruere or Prostruere to destroy or prostrate. And Abatement de briefe is a prostration or ouerthrowing of the writ.

(*) Bract.lib.5.fol.425. 11.R.2.Execut.25.13.E.4.8 3.Aff.12.

¶ (*) *Alera quite sauns iour, &c.* That is to goe quiet without any continuance to any certaine day, and therefore the Defendant is not bound to any certaine attendance, vntill the party purchaseth his Letters of absolution, and the reattachment or re-summons be sued, the entrie of which award is Ideo loquela prædicta remaneat sine die quousque, &c.

Vide Sect.671.

¶ *Iour.* Dies (e) in legall vnderstanding is the day of appearance, of the parties or continuance of the plea. And you shall vnderstand that first in reall actions there are, dies communes, common dayes, whereof you shall reade in diuers ancient Statutes.

(e) 51.H.3.cap.1.&.2. Marlebr.ca.12. 32.H.8.ca.21

(f) Also in all Sommons vpon the originall there must bee fifteene dayes after the Sommons before the appearance. (g) But if the originall be returned tarde and Sommons alias goeth forth, there must bee nine Returnes betweene the Teste and the returne. And so in other iudiciall processe in reall actions, sauing if Conusans bee demanded to bee holden within his Mannor, there processe shall be awarded from three weekes to three weekes.

(f) Articul.super Cart.ca.15 28.E.1.
(g) 8.H.6.20.30.H.6.35. 8.Eliz.Dier.252.

And before the Statute of Articuli super cartas, in all Sommons and Attachements in plea of Land there shall be contained the tearme of fifteene dayes. (q) And it appeareth aswel by the Statute, as by the ancient Authors of the Law who wrote before the Statute, that this was the ancient Common Law: and the reason of these long dayes giuen in reall actions was (the recouery being so dangerous) that the Tenant might the better prouide him both of answere and of proofes, (*) but by consent they may take other then common dayes.

(q) Mirror.cap.2.§.19. Bract.lib.5.fol.334.& lib.4. fol.255. Britton.fol.279.b. Fleta.lib.6 cap.6.12.E.4.15.
(*) 11.H.6.23.15.E.3. iour.22. 21.E.3.23.15.Ass. Britton. fol.10.b.

And it is not amisse to note what the ancient Law was in proceeding against a man for his life. And therefore heare what Britton saith, Sur le presentment de cest felony (vnder which he includeth also Treason) voilons nous (for he wrote in the Kings name) que trestous ceux que ent seir' endites, face le Viscont hastiment prender, & safement lour corps en prison garder & que ilz sont menes deuant nous, ou deuant neus Iustices: & pur ceo que nulluy ne soit disgarnis de lour respons, voilons que ceux que issint soient prise que ilz eynt temps de purueyer lour respons 15. iours an meyns silz le prient, & en dementiers soient safement gardes: (r) Vide Fortescue of this matter. And see the Mirror that in some cases the partie conuicted had fourtie dayes, or at least thirtie dayes to shew some matter to disturbe (that is to arrest) Judgement, which now I know is gone in desuetudinem and great expedition is now made in pleas of the Crowne concerning the life of man. Sed de morte hominis nulla est cunctatio longa.

(r) Fortescue in libro de laudibus legum Angliæ. Mirror.ca.4.§. Sept choses disturbent iudgement mortels.

(s) And the vse of the Kings Bench at this day is, that if the offence be committed in another Countie then where the Bench sits, and the Inditement be remoued by Certiorari, there must be fifteene dayes betweene euery processe and the returne thereof, but if it be committed in the same Countie where the Bench sit they may proceed de die in diem, but so they will but rarely: but let vs returne againe to the Common Pleas.

(s) Lib.9.118.b. Zanchers case.

Secondly, There is a day called dies specialis, (a) as in an Assise in the Kings Bench or Common Pleas, the Attachement need not be 15. dayes before the appearance. Otherwise it is before Justices assigned, but generally in Assizes, the Iudges may giue a speciall day at their pleasure, and are not bound to the common dayes, (*) and these dayes they may giue as well out of terme as within. So vpon an imparlance the Court may giue any speciall or particular day, but that must be in the tearme time, and likewise in a Scire facias, vpon a fine or a recouery in a recouery in a reall action, because it is a writ of Execution, and so it is in a per que seruitia and the like and in all iudiciall writs, in processe against an Infant to iudge of his age, or when the husband prayeth in aid of his wife, or in a pone at the suite of the Defendant there need not bee fifteene dayes. Also after Demurrer in Law the Court may giue what day they will (b) And it is worthy the noting, that if in an Assise the parties be adiorned to Westm. vsque 15. Pasche, there they be not demaundable till the fourth day, but if it be adiorned vsque diem Lunæ, or Diem Martis, there the parties are demaundable on that day.

(a) Artic.supercart.vbi supra. F.N.B.177.c.11.Ass.30. 12.Ass.4.22.Ass.79. 3.H.6. Assise 2.9.E.4.5.a.27.E.3. 1.2.W.1 cap.vltimo.
(*) F.N.B.177.D.7.Ass. 7.14.Ass.4.24.E.3.31. 39.E.3.20 9.E.4.18. 12.E. 4.15.8.H.5.Error.87.

12.E.4.15.

(b) 41.E.3.Iour.16. 8.E.4. 4. 1.H.6.4. 27.Ass.33.

Thirdly, (c) There is a day of grace, dies gratiæ, or a day of courtesie, the name doth shew of what kind it is, and regularly this day is granted by the Court, at the Prayer of the Demaundant

(c) 3.E.2.auowrie.188. 15.E.3.iour.26.22.E.3.20. 1.E.3.4.lib.9.fol.49. Countee de Salops case. 33.H.6.42.

maundant or Plantife in whose delay it is, and neuer at the prayer of Tenant or Defendant. But it is worthy of obseruation (d) that a day of grace is neuer granted where the King is partie by Aide prayer of the Tenant or Defendant, nor where any Lord of Parliament or Peere of the Realme is Tenant or Defendant. (e) And sometime the day that is 4. die post is called dies gratiæ, for the very day of returne is the day in Law, and to that day the Iudgement hath relation, but no default shall be recorded till the fourth day be past, vnlesse it be in a writ of right, where the Law alloweth no day, but only the day of returne. This day is sometime called dies amoris, and sometime a dies datus, but it were too long to enumerate all. This shall be sufficient to giue the Reader a taste to vnderstand the residue concerning this matter.

(f) There is also a day of appearance in Court by the writ, and by the Roll, by writ when the Sheriffe returns the writ. By the Roll, when he hath a day by the Roll, and the Sheriffe returne not the writ, there the Defendant to saue himselfe from corporall paine as by imprisonment, or to preuent the losse of issues, or to saue his freehold or inheritance may appeare by the day he hath by the Roll.

(g) Note, it is said commonly that the day of Nisi prius, and the day in banke is all one day, that is to be vnderstood as to pleading, but not to other purposes.

There are dies iuridici (which (h) Britton calleth temps discouenables) and dies non iuridici: dies iuridici (except it be in Assises) are only in the tearme. (i) And there be also in the tearme dies non iuridici. As in all the fours tearmes the Sabbath day is not dies iuridicus, for that ought to be consecrated to Diuine Seruice. Also in Michaelmasse Tearme the Feasts of All Saints and of All Soules: in Hillarie Tearme, the Purification of the blessed Virgin Marie, and in Easter Tearme the Feast of the Ascention are not dies iuridici, but set apart by the ancient Iudges and Sages of the Law for Diuine Seruice. For Trinitie Tearme (which sometime had seuen dayes of returne, and was as long as Michaelmasse Tearme is now: but for anoyding of infection in that hot time of the yeare, and that men might not be letted to gather in Harueſt, three returnes (since Littleton wrote) viz. Crastino Sancti Iohannis Baptistæ, Octabis Sancti Iohannis Baptistæ, and 15. Sancti Iohannis Baptistæ, are by the Statute of 32. H. 8. cut off and become dies non iuridici) And in those dayes the Feast of Saint Iohn the Baptist was not dies iuridicus. And the said Statute called, Dies Communis in Banco, is in diuers points (since Littleton wrote) altered, as by the said Statute appeareth. And in ancient time respect and reuerence was had by Law to certaine times, as it appeareth (k) by the Statute of W. 1. cap. 5. which hath a short but an excellent preamble. viz. Et pur ceo que grand charitie serra de faire droit a touts in tout temps, ou mestior ferroit: puruieu est per assentment des prelates, que Assises de nouel disseisin, mortdaunceſter, & darreine presentment fuissent prises en le Aduent, en septuagesime, & en Quaresme, auxibien come (le home) prent lenqueſtes, & ceo pria le Roy, as Eueſques.

(l) This Statute is expounded in Bookes, which I haue only added, to the end the studious Reader might vnderstand the Bookes that darkly speake of this matter, and bee ignorant of nothing, that belongs to the vnderstanding of any part of the Law. Now Aduent is a moneth before the Feast of the Natiuitie of our Sauiour Christ, so called, de Aduentu Domini in carne. Septuagesima beginneth euer on the Sabbath Day, and is the third Sabbath before Shroueſunday, so called because it is the 70. day before the Feast of Easter. Sexagesima is the second Sabbath before Shroueſunday so named, because it is the 60. day before Easter, and so of Quinquagesima, and Quadragesima (m) whereof you shall reade in Acts of Parliament, and ancient Authors. Now as there bee dies iuridici, so there bee horæ conuenientes, whereof the Mirror saith (n) abusion que len tient pleas per dimenches (id est, Sabbaths) ou per auters iours defeudus, ou deuant le soliel leuy, ou nocantre, ou en dishoneſt lieu.

(o) Furthermore there are (as ancient Authors terme them) dies solaris aut dies lunaris secundum quod Deus diuisit lumen à tenebris, ex quibus duobus diebus efficitur vnus dies qui dicitur artificialis ex die præcedente & nocte subsequente, qui constat ex 24. horis.

But we at this day retayning the same method doe differ in words. For wee say, Dierum alij sunt naturales, alij artificiales, dies naturalis constat ex 24. horis, & continet diem Solarem & noctem, and therefore in Inditements of Burglarie, and the like wee say in nocte eiusdem diei. Iste dies naturalis est spatium in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies artificialis siue Solaris incipit in ortu Solis, & desinit in occasu, and of this day the Law of England takes hold in many cases. Now diuers Nations beginne the day at diuers times. The Iewes, the Chaldeans and Babylonians beginne the day at the rising of the Sunne, the Athenians at the fall, the Vmbri in Italie beginne at midday, the Egyptians and Romans from midnight, and so doth the Law of England in many cases. Of all which you shall reade plentifull matter in our Bookes, and in my Reports which by this short instruction you shall the better vnderstand.

(p) There is also Annus minor and maior. The lesse yeare consisteth of 365. dayes and sixe houres, whereby in euery fourth yeare, there is dies excrescens, which makes that yeare to haue

(d) 14. E. 3. iour. 24. 15. E. 3. ibid. 21. 22. E. 3 9 27. E. 3. 88

(e) 22. E. 4. iour. 39. 18 E 3. ibid. 20. 38. E. 3. 20. 9. Ass 41 21. E. 3. 13. 41. E. 3. ibid 16. 33. H. 6. 42. 34. H. 6. 27. 10. Eliz. Dier. 269. 35. H. 6. 29. 24. E. 3. 28. 24. E. 3. brese 556. Bract. lib. 5. fol. 307.

(f) 21. E. 3. 43. 3. H 6. 2. a 22. H. 6. 20. 3. E. 4. 15. 6. E 4 7. E. 4. 15. 8. E. 4. 18. 3. H. 7 8 10. H. 7. 11. b. 27. H 8. 14. Lib. 11. 40. 17. E. 3. 2. 11. Eliz. Dier. 286.

(g) 21. H. 6. 10. 20. 4. H. 6. 9. 40 E. 3. 31.

(h) Britton. fol. 134. a.

(i) Mirror cap. 3. §. exception de temps & cap. 5. §. 1.

32. H. 8. cap. 21.

(k) W. 1 cap. vltimo.

(l) 7. Ass p. 7. 14. Ass. 5. F. N. B. 177 &c. Britton. fol. 134. b.

(m) W. 1. cap. 51. fait anno 3. E. 1. Britton. fol. 134. cap. 53.

(n) Mirror lib. 5. §. 1.

(o) Bract. lib. 4. fol. 264. Britton. fol. 209.

Gen. cap. 1. vers. 4. 5.

(p) Bract. lib. 5. fol. 339. Britton. fol. 209. a.

haue in rei veritate 366. dayes, and that is called annus maior. (q) A quarter of a yeare containeth by legall computation 91. dayes, and halfe a yeare containeth 182. dayes for the odde houres in legall computation are reiected, and by (r) the Statute de anno bissextili it is prouided, Quod computentur dies ille excrescens & dies proxime præcedens pro vnico die, so as in computation that day excrescent is not accounted. A moneth mensis is regularly accounted in Law 28. dayes, and not according to the Solar moneth, nor according to the Kalender, (s) vnlesse it bee for the account of the laps in a quare impedit. There is mensis Solaris, and mensis Lunaris. Solaris est 12. pars anni, viz. spatium 30. dierum, horarum 10. & minutorum 30. & Lunaris est spatium 28. dierum.

(q) 17. Eliz. Dier. 345.

(r) 21. H. 3. stat. de anno bissextili.

(s) Lib. 6. fol. 62. Cartsbyes case.

¶ *Resommons ou re-attachement.* These are Writs that the demaundant or Plaintife after he hath obtained his Letters of absolution may sue out to bring the Tenant or Defendant againe into Court to haue day, to make answere vnto him. (t) And these Writs doe lie in all cases when the plea is discontinued or put without day either in this case or in case when the Demaundant or Tenant hath his age, or for the non venue of the Justices, or in case of a Protection or Essoine de seruice le Roy &c. Of these Writs there be two sorts, viz generall and speciall, whereof you may see Presidents, and reade more at large in the case of discontinuance of Processe in my Reports, and need not here to be inserted.

(t) Bract. lib. 5. fol. 425. Britton. ca. 74. lib 7. fo. 29. 30

¶ *Sur son originall.* This is intended of his originall Writs, or of that which is in stead of an originall Writ. But note that in the other fiue cases the Writ shall abate, and in the case of Excommengement the Writ shall not abate, but the plea to bee put without day vntill the Plaintife purchase his Letters of absolution, and sue out his resommons or re-attachement.

In ancient times more persons seemed to be disabled then these fiue recited by Littleton. As first he that was a Leaper, and by the Writ De leproso amouendo was propter contagionem morbi prædicti (as the Writ sayth) & propter corporis deformitatem (as others say) to be remoued from the societie of men to some solitary place, and thereupon (u) it is said, Datur etiam exceptio tenenti, ex persona petentis peremptoria propter morbum petentis incurabilem & corporis deformitatem, vt si petens leprosus fuerit, & tam deformis quod aspectus eius sustineri non possit, & ita quod à communione gentium sit separatus, talis quidem placitare non potest, nec hæreditatem petere. (x) And herewith Britton agreeth treating of disabled men, as men outlawed, abiured the Realme, attainted of Felonie, &c. addeth ne mesel, custe de common gent.

(u) Bract. lib. 5. fol. 421.

(x) Britton fol. 39. & 88.

(y) And Fleta sayth, Competit etiam ei exceptio propter lepram manifestam vt si petens leprosus fuerit & tam deformis quod à communione gentium merito debet separari, talis enim morbus petentem repellit ab agendo.

(y) Fleta lib. 6. cap. 39. 32. E. 3. inderff. clauf. 20. part. nu. 14. F. N. B. 234. Register.

And if these ancient Writers be vnderstood of an appearance in person, I thinke their opinions are good Law, for they ought not to sue nor defend in proper person but by Atturny, for they are separated à communione gentium propter contagionem morbi & deformitatem corporis.

Before the Conquest this disease was not knowne in England. For Master Camden writing of Burton Lazers in Leicestershire sayth, (a) Primis Normannorum temporibus collecta per Angliam stipe nosocomium hoc constructum ferunt, quo tempore lepra (quæ à nonnullis Elephantiasis) grauissimè vi contagionis per Angliam serpsit. And it is called Morbus Elephantiasis, because the skinnes of Leapers are like to Elephants. (b) And the Law of England for the remouing of the Leapers from the societie of men to some solitarie places grounded vpon Gods Law.

(a) Camden. in Leicestershire. verbo. Burton.

(b) Levit. cap. 13. verse 44. 45. 46. Numeri cap. 5. verse 1. 2. 4. Regum. cap. 15.

(c) Also there was a time when Ideots, Madmen, and such as were deafe, and dumbe, naturally were disabled to sue, because they wanted reason and vnderstanding, (tales enim non multum distant à brutis) but at this day they all may sue, for the suite must bee in their name, but it shall be followed by others. (d) And note, that when an Ideot doth sue or defend, he shall not appeare by Gardeine or Porcheine Amy, or Atturney, but he must be euer in person, (e) but an Infant or a Minor shall sue by Porcheine Amy, and defend by Gardeine but now let vs heare what Littleton will say vnto vs.

(c) Bract. l. 5. 420. 421. Britton. fol. 39. Fleta lib. 6. cap. 37. (d) 33. H. 6. 18. F. N. B. 27. G. (e) 27. H. 8. 11. 40. E. 3. 16. 20. E. 42. F. N. B. 27. H.

Section 202.

(a) *Haplein* (a) *seculer*, Is he that is Infra sacros ordines, but he is not regular, (that is) liueth not vnder certaine rules,

(a) Mirror cap. 2. §. 18. Doct. & Stud. fol. 141. 4. E. 4. 25. per Danby. 27. Ass. pl. 49.

¶ Item si vn villein est fait vn chapleine seculer, vncore son seignior poit luy seiser

Also if a villeine be made a secular Chaplaine, yet his Lord may seise him as

ſeiſer cõe ſon villeine, & ſeiſie les biens, &c. Mes il ſemble que ſi le villein enter en Religion, & eſt profeſſe, que le Sñr ne poit luy prender ne ſeiſer, pur ceo que il eſt mort en ley, nient pluis q̃ ſi vn frank hõe prent vn niefe a ſa feme, le Seignior ne poit prendre ne ſeiſer la feme de le baron. Mes ſon remedy eſt dauer vn action enuers le baron pur ceo que il prist ſa niefe a feme ſans ſon licence & volunt, &c. Et iſſint poit le Sñr auer action enuers le ſouereign del meſon que prist & admittast ſon villein deſtre profeſſe en meſme le meaſon ſans licence & la volunt le Seignior, & recouera ſes damages a la value de le villein. Car celuy que eſt profeſſe Moigne ſerra vn Moigne, & come vn Moign ſerra pris pur terme de ſa vie natural, ſinon que il ſoit deraigne per la ley de ſaint Egliſe. Et il eſt tenus per ſon Religion de garder ſon cloiſter, &c. Et ſi le Sñr luy puiſſe prender hors de ſa meaſon, donques his villeine, and ſeiſe his goods, &c. But it ſeemeth that if the villeine enter into Religion, and is profeſſed that the Lord may not take nor ſeiſe him, becauſe hee is dead in Law, no more then if a free man taketh a neiſe to his wife the Lord cannot take nor ſeiſe the wife of the husband, but his remedy is to haue an action againſt the husband, for that hee tooke his niefe to wife without his licence and will, &c. And ſo may the Lord haue an action againſt the ſoueraigne of the houſe which takes and admitteth his villeine to bee profeſſed in the ſame houſe, without the licence and leaue of the Lord, and hee ſhall recouer his damages to the value of the villeine. For he which is profeſſed a Monke ſhalbe a Monke, and as a Monke ſhall be taken for terme of his naturall life, vnleſſe hee be deraigned by the law of holy Church. And he is bound by his Religion to keepe his Cloyſter, &c. And if the Lord might take him out of his houſe, nor hath doſwed theſe three things aboue ſpecified.

¶ (b) *Enter en religion & eſt profeſſe.* That is intended (as hath beene ſaid) when hee is regular and profeſt vnder certaine rules, as to become one of the foure orders of Friers (that is to ſay) Freres minors, Auguſtines, Preachers, or Carmelites, or become a Monke, Cannon or Nunne, &c. Qui ad viuendum regulariter ſe aſtringunt, ſiue ſunt Monachi, ſiue Canonici, regulares, ſiue ſanctimoniales. For all theſe are regular and Votaries, and are dead perſons in Law, but ſo are not the ſecular perſons, as Prebends, Parſons, Vicars, &c.

(b) *Britton. cap. 31. fo. 79. Doctor & Student. fo. 142.*

4. H. 4. 11 17.

And therefore it is holden in our bookes, (c) that if a ſecular Prieſt taketh a wife and hath iſſue and dieth, the iſſue is lawfull and ſhall inherite as heire to his father, &c. for (as it was then holden) the mariage was not voide, but voydable by diuorce, and after the death of either partie no diuorce can bee had.

(c) 21. H. 7. 39. 19. H. 7. 10 bast. ordy. 33. 5. E. 2 tit. Nonability, 26. 47 E. 3. Caſwold.

But if a man marrieth a Nunne, or a Monke marrieth, theſe mariages were holden voide and the iſſues baſtards, becauſe (as it was then holden) the marriage was vtterly voide; for that the Nunne and the Monke (as Littleton here ſaith) were dead perſons in Law. And that is the reaſon yeelded by Littleton, wherefore a villeine being profeſſed in religion cannot bee ſeiſed by the Lord, becauſe hee is dead in Law, and yet his blood or bondage is not thereby altered, but his perſon in reſpect of his profeſſion only priuiledged. (d) In Decretalibus ſtatutum eſt quod nullus epiſcopus ſpurios aut ſeruos donec à dominis ſuis fuerint manumiſſi ad ſacros ordines promouere præſumat. But notwithſtanding his perſon is priuiledged till hee be diſgraded. And ſo it is holden in

(d) *Clauſ. lib. 3. ca. 3. Britton fo. 79. & 82.*

(e) *Fleta lib. 2. cap. 44. Britton. vbi supra.*

our old bookes. (e) If a villeine be made a Knight for the honour of his degree, his person is priuiledged, and the Lord cannot seize him vntill he be disgraded. Nullam vilem personam natione spuriũ, vel seruilis conditionis ad militiæ strenuitatis ordinem promoueri licebit sed cum à Dominis suis petantur vt natiui ipsis primo degradatis statim ad iudicium procedatur.

il ne viueroit cõe vn mort person, ne solonc̃ son Religion, le quel serroit inconuenient, &c. then he should not liue as a dead person, nor according to his religion, which should be inconuenient, &c.

(f) *F. N. B. 78. b. 30. E. 1. tit. Villen. 46. 33. E. 3. ibid. 21 18. E. 2. ibid. 30. 46. E. 3. 6. 4. E. 4. 25. 1. H. 4. 6. 13. E. 1. Villen. 36. 18. Ass. 10. Doct. & Stud. 141. Mirror. cap. 2. §. 18. acc.*

¶ *Si vn frank home prent vn niefe.* (f) Some haue holden that by this marriage the wife shall be free for euer, but the better opinion of our Bookes is, that she shall be priuiledged during the couerture only, vnlesse the Lord himselfe marrieth his Niefe, and then some hold, that she shall be free for euer.

If a Niefe be regardant to a Mannor, and she taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Mannor, the husband dieth, the Feoffee shall not haue the Niefe but the Feoffor, for that during the marriage shee was seuered from the Mannor. And so is the Booke 29. Ass. (which is falsly printed) to be vnderstood.

(g) *16. H. 3. nuper obiit 17. 8. H. 3. breue 789.*

(g) If two Coparceners be of a Villeine, and one of them taketh him to husband, she and her husband shall not haue a nuper obijt against her Copercener, but after the decease of her husband she shall.

(h) *Vide Britton fol. 82. Fortescue cap. 43. 46. E. 3. 6 a.*

¶ (h) *Mes son remedie est dauer vn action vers le Baron, &c.* Albeit marriage is lawfull, yet when it worketh a preiudice to a third person, an action in this Case lyeth against the husband to the value of his losse. And albeit hee did not know her to be a Niefe, yet the action lyeth against him, for hee must take notice thereof at his perill, (i) vnlesse she be out of the seruice of the Lord and vagarant, and then if one not knowing her to be a Niefe marrieth her, some say that in that case no action lyeth against the husband. (k) And likewise the Lord shall haue an action against those that were the meanes to make the Villeine a Knight.

(i) *7. R. 2. tit. barre 240.*

(k) *Britton. fol. 82. b.*

31. H. 6. cap. 5. 12. H. 7. ca. 7. 11. H. 4. 5. b.

¶ *Souereigne*, Præcipuus, Chiefe, as here, souereigne del meason is the Chiefe of the house.

31. H. 8. cap. 29.

¶ *Si non que il soit deraigne.* This word (deraigne) commeth of the French word derayer, or deraigner, that is to say, to displace or to turne one out of his order, and hereof commeth deraignment a displacing, or turning out of his order. So when a Monke is derained, he is degraded and turned out of his Order of Religion, and becomes a lay man.

40. Ass. 27. per Finchden.

¶ *Le quel serra inconuenient.* Ab inconuenienti is a good argument in Law, as Littleton often obserueth. And here Littleton concludeth that the Lord cannot take a Monke out of his house, for that it should be inconuenient, which Littleton here sheweth, for diuers reasons, and therefore vnlawfull. And the inconuenience is, that where a man of Religion should liue according to his profession in Religion, by the taking of him out he should not.

¶ *Si le Seignior luy puissoit prender, &c.* By this it appeareth, that if a man detayneth a Villaine in his house, the Lord of the Villaine may take him out of the house, for here the impediment wherefore the Lord could not take him out of the house, was for that the Villaine was a Monke professed. And so in case of the Wardship here next following.

Section 203.

¶ *Briefe de rauishment de garde.*

This writ is giuen by the Statute of W. 2. cap 35. in verbis conceptis, the wordes of which writ bee that the defendant, Talem hæredem cuius maritagium ad ipsum A.

¶ En mesme le maner est, si soit gardeine en chiualrie de corps & de fre dun enfant deins age, si lenfant quant il

¶ IN the same manner it is, if there be a Gardein in Chiualrie of the bodie & land of an infant within age, if the infant

il vient al age de 14. ans entra en Religion, & est profesſe, le garden nad auter remedie (quant a le garde de le corps) forque brē de rauiſhment de garō enuers le Soueraigne de le meaſon. Et ſi aſcun eſteant de plein age, que eſt coſin & hēre del enfant enter en l' terre, le gardein nad aſcun remedie quant al garde d la trē, p ceo q̄ lentrie del hēre lenfant eſt congeable en tiel caſe.

when he comes to the age of 14. yeares entreth into Religion, and is profeſt, the gardein hath no other remedy (as to the wardſhip of the body) but a writ of rauiſhment *de gard* againſt the ſoueraigne of the houſe. And if any being of full age who is coſin and heire of the enfant entreth into the land, the gardein hath no remedy as to the wardſhip of the land, for that the entry of the heire of the infant is lawfull in ſuch caſe.

pertinet, &c, rapuit & abduxit &c. contra pacem. Now Rapere ſignifieth properly to take away by violence and force. And when the Soueraigne tooke and admitted the ward into his houſe to bee profeſſed, this in iudgement of Law is a Rauiſhment of the ward, and as it appeareth in our bookes before the ſaid ſtatute, there lay a generall action of treſpaſſe in that caſe. *Lib.9. Doctor Huſſey's caſe. fol.72.*

¶ *Apres lage de 14. ans, &c.* Our Author mentioneth this age becauſe it is prohibited by the ſtatute of 4.H.4. that no childe ſhall be receiued into any houſe of religion before that age without conſent of his parents and gardeins, &c. *4.H.4.cap 17.*

¶ *Le gardein nad aſcun remedy, &c.* Here it appeareth that by the profeſſion of the ward, the Lord loſeth the wardſhip of the land, becauſe he is Civiliter mortuus, a dead man in law and cannot hold any inheritance, neither can the gardein continue the wardſhip of the land, becauſe by the ciuill death of the ward the inheritance is diſcended to another, who is either to be in ward, or pay reliefe. So as in this caſe the gardein hath Damnum, but it is Abſque iniuria, becauſe he loſeth the wardſhip of the land by act of Law, viz. the diſcent thereof to another, and therefore the Law giueth to him no remedy in this caſe, neither by any formed writ, nor by action vpon his caſe, for Littletons words are generall, (he hath not any remedie.)

Sect. 204.

¶ ITem, en mults diuers caſes le Sñr poit faire manumiſſion & enfranchiſement a ſon villein. Manumiſſion eſt properment, quāt le Sñr fait vn fait a ſon villein de luy enfranchiſer Per hoc verbū (Manumittere) quod idem eſt quod extra manum, vel extra poteſtatem alterius ponere. Et pur ceo q̄ per tiel fait le villein

ALſo in many and diuers caſes the Lord may make manumiſſion and enfranchiſement to his villein. Manumiſſion is properly when the Lord makes a deed to his villeine to enfranchiſe him by this word (*Manumittere*) which is the ſame as to put him out of the hands and power of another. And for that that by

¶ M *Anumiſſion.* (l) Manumittere quod idem eſt quod extra manum vel poteſtatem ponere. *(l) Glanvil lib.5.cap.5. Britton, fol 78. & c.82.97. 110. Fleta lib.3.cap.13. & lib.2.ca.44.*

Quia quamdiu quis in ſeruitute eſt, ſub manu & poteſtate domini ſui eſt.

Qui in poteſtate domini ſui eſt, in manu domini ſui eſſe dicitur, ſed poſtquam Manumiſſus eſt, ab illo liberabitur, ergo dicitur quaſi extra manum, id eſt, extra poteſtatem domini ſui miſſus. And here is to bee noted (as in many other places is obſerued) what regard Littleton hath to the true Etimologies of words.

¶ (m) *Enfranchiſement.* (Hereby Littleton *(m) Mirr. ca.2.§.18.*

ron explaneth Manumission) it is derived from the French word Franchise; that is, Liberty, and in the Common Law it hath diuers significations, sometimes the incorporating of a man to be free of a Company or body politique, as a free man of a Citie, or Burgesse of a burroughe, &c. sometimes to make an Alien a Denizen, and here to manumise a villeine or bond man.

est mis hors de la main & de la poier son Sñr, il est appelle Manumission. Et issint chescun maner de enfranchisement fait a vn villein pole estre dit Manumission.

such deed the villeine is put out of the hands and of the power of his Lord, it is called Manumission. And so euery manner of infranchisement made to a villein, may bee said to be a Manumission.

So as this word (Enfranchisement) is more generall then Manumission, for that is properly applyed to a villeine, and therefore euery Manumission is an infranchisement, but euery Infranchisement is not a Manumission. (n) There be two kindes of Manumissions, one expresse, and the other implied. Expresse, when the villeine by deed in expresse words is manumised and made free, the other implyed by doing some act, that maketh in iudgement of Law the villeine free, albeit there be no expresse words of Manumission or Enfranchisement. (o) If a villeine be manumised, albeit he become ingratefull to the Lord in the highest degree, yet the Manumission remaines good: and herein the Common Law differeth from the Ciuill Law, for, Libertinum ingratum leges ciuiles in pristinam redigunt seruitutem, sed leges Angliæ semel manumissum semper liberum iudicant, gratum & ingratum.

(n) *Mirror, cap.2.§.18.*

(o) *Fortescue, ca.46.*

There be also some cases where the villeine shall be priuiledged from the seisure of the Lord, albeit he be not absolutely manumised or infranchised. Sometimes Ratione loci, (p) as if a villeine remaine in the ancient demeane of the King a yeare and a day without clayme or seisure of the Lord, the Lord cannot haue a writ of Natiuo habendo or seise him so long as hee remaines and continues there, and the reason of this was in respect of the seruice hee did to the King in plowing and tillage of the demeanes and other labours of husbandry for the Kings benefit. And herewith agreeth old bookes (q) which say that this immunity was sometime granted by common consent to the King for his profit, and for the helpe or ease of his villeines

(p) *39.E.3.6.b.F.N.B.79.a.*

(q) *Glanuil, lib.5.ca.5. Fleta lib.2.ca.44. Britt. fo.79 Mirror, ca.2.§.18.*

(r) If a villeine be a Priest of the Kings Chappell, the Lord cannot seise him in the presence of the King, for the Kings presence is a priuiledge and protection for him. Sometime Ratione professionis, (s) as if a villeine be professed a Monke, or a Nefe a Nunne, as hath been said. (t) Sometime (as some hath said) Ratione dignitatis, as if the villeine be made a Knight, &c. Sometime Ratione matrimonij, as if a Nefe marry a free man she is priuiledged during the mariage, but not absolutely enfranchised, for if her husband die she is Nefe againe, vnlesse the Lord himselfe marieth the Nefe, and then she is enfranchised for euer as hath been said before. And it shall not bee amisse to obserue the wisedome of our Ancients with what solemnity (to more surety therof) Manumissions were made: Qui seruum suum liberat, in Ecclesia vel mercato vel comitatu vel hundredo coram testibus & palam faciat, & liberas ei vias, & portas conscribit apertas, & lanceam & gladium vel que liberorum arma in manibus ei ponat. Our Author hauing spoken of an expresse manumission, here followes infranchisements in Law.

(r) *27.Ass.p.49.*

(s) *Glanuil. lib.5.cap.5.*

(t) *Britton, vbi supra.*

Lib.Rub.cap.78.

Section 205.

CFOr when the Lord enableth the villein to haue an Action against him as for debt or Annuitty, &c. or giueth to the villein a certaine and fixed estate in Lands, Tenements, or hereditaments as a Lease for yeares, this amounteth to an infranchisement not only during the years but for euer, (u) and albeit the Lease be made to the villein without Deed yet it is an infranchisement for euer.

CAVri si le Sñr fait a son villein vn Obligation de certeine somme dargẽt ou grañt a luy per son fait vn annuity, ou lessa a luy per son fait terres ou tenements pur terme des ans, le villein est enfranchise.

ALso if the Lord maketh to his villeine an Obligation of a certaine somme of money or granteth to him by his Deed an Anuuity, or lets to him by his Deed lands or tenements for terme of yeares, the villeine is enfranchised.

(u) *50.E.3.tit.vil.25. 11.H.7.13.*

Sect. 206.

CAury ſi le Sñr fait vn feoffement a ſon villein daſcun terres ou tenemts per fait ou ſans fait, en fee ſimple, fee taile, ou pur terme de vie, ou ans, & a luy liuera ſeiſin, ceo eſt vn enfranchiſement.

ALſo if the Lord maketh a feoffment to his villeine of any lands or tenements by Deed or without Deed, in fee ſimple, fee taile, or for terme of life or yeares, and deliuereth to him ſeiſin, this is an enfranchiſement.

This is euident and agreeth with our bookes. *Vid.24.E.3.32. 12.H.3.tit.Villi.42.*

Section 207.

CMes ſi le Sñr fait a luy vn leaſe des terres ou tenements, a tener a volunt le Sñr, per fait, ou ſans fait, ceo neſt aſcun enfranchiſemẽt pur ceo q̃ il nad aſcun manner d certainty ne ſuertie de ſon eſtate, mes le Sñr luy poit ouſter quant il voylet.

BVt if the Lord maketh to him a leaſe of lands or tenements, to hold at will of the Lord by deed or without deed, this is no enfranchiſement for that, that hee hath no manner of certaintie or ſuretie of his eſtate, but the Lord may ouſt him when hee will.

CPer *fait.* So as a Deed made to a villeine by the Lord is no infranchiſement, when the Deede transferreth no certaine or fixed eſtate, but reuocable at the Lords will. If the Lord releaſe to his villein all his right in Blacke acre, and the villeine is not thereof ſeiſed, this is no infranchiſement becauſe it is voide and can giue no cauſe of action. If the Lord attorneth to his villeine, this is no infranchiſement. *11.H.7.*

Section 208.

CAury ſi le Sñr ſuiſt enuers ſon villein vn Præcipe quod reddat, ſil recouer, ou ſoit nonſue apres appearance, ceſt vn manumiſſion, pur ceo q̃ il puiſſoit loyalmẽt enter en la terre ſans tiel ſuit. En meſme le manner eſt, ſil ſuiſt enuers ſon villein vn action d debt ou daccount, ou de couenãt,

ALſo if the Lord ſueth againſt his villein a *Præcipe quod reddat*, if hee recouer or bee nonſuite after appearance, this is a manumiſſion, for that hee might lawfully haue entred into the land without ſuite. In the ſame manner it is, if hee ſue againſt his villeine an action of debt, or account, or of couenant, or of

CSi *Seignior ſuiſt enuers ſon villeine vn* Præcipe quod reddat, &c. *ceo eſt vn manumiſſion.* And the principall reaſon hereof is, for that by this ſuite hee enableth the villeine to be a perſon able to render him the land by courſe of law where the Lord without any ſuch ſuite might haue entred. (w) But if Tenant in tayle be of a Mannor whereunto a villein is regardant, and enfeoffeth the villeine of the Mannor and dyeth, the iſſue ſhall haue a formedon againſt the villeine, and after the recouery of the manor he ſhall ſeiſe the villein. And (w) 24.E.3.Diſcont.16. *Vid.Britton 78.& 126.*

And the reason is for that he could not seise the Villeine till he had recouered the Mannor which was the principall, and at the time of the writ brought, he was no Villeine.

The Tenant infeoffes the Villeine of the Lord, and an estranger vpon collusion, in this case although the Lord may enter vpon the Villeine for the moytie, yet may hee haue a writ of ward against them both without infranchisement of the Villeine, for if the Lord should enter vpon the Villeine, then should his Seigniorie be suspended, and then could not he haue a writ of ward against the oother.

The Lord vpon a writ of Couenant brought by the Villeine, leuies a fine to his Villeine of Land which is ancient Demesne, the Lord of whom the Land is holden reuerseth the fine in a writ of Deceit, albeit the Authoritie and Jurisdiction of the Court is disproued, and that the Lord of the Villeine shall bee restored to the Land giuen by the fine, yet is it an enfranchisement, for that he answered to the writ of Couenant, and the fine was voydable, and not voyde, and therefore being once an enfranchisement, it cannot bee auoyded by the reuersing of the fine.

¶ *Soit non sue (id est) non est prosecutus breue suum*, for by the Law the Plaintife bee first Agent at euery continuance, and therefore the Record sayth, quod petens seu querens (naming them) obtulit se, who if hee bee called, and make default, then he is said to be Nonsuit, id est, non est prosecutus, &c.

By Littleton here it appeareth that there is a Nonsuite before appearance at the returne of the writ, or after appearance at some day of continuance. (x) The difference

ou de Tresspasse, ou de hutuismodi, ceo est vn enfranchisement, pur ceo que il puissoit emprison le villein, & prender ses biens sans tiel suit. Mes si le seignior suist son villeine per appeale de felony, ou il fuit endict de ceo deuant, ceo ne enfranchisera pas le villein coment que le matter de lappelle soit troue encounter le seignior, pur ceo que le Seignior ne puissoit auer le villein destre pendue sãs tielsuit. Mes si le villeine ne fuit endict de mesme le felonie, deuant lappeale sue enuis luy, & puis est acquite de cest felonie, issint que il recouera dammages enuers son seignior pur le faux appeal, donques le villeine est enfranchise, pur la cause de le iudgement de dammages a luy destre don enuers son seignior, &c. Sed de illis quære.

Tresspasse, or of such like, this is an infranchisement, for that he might imprison the villeine, and take his goods without such suite. But if the Lord sue his Villeine by appeale of Felonie, where he was indited of the same before, this shall not enfranchise the Villeine, albeit that the matter of appeale bee found against the Lord, for that the Lord could not haue the Villeine to bee hanged without such suite. But if the Villeine were not indited of the same Felonie, before the appeale sued against him, and afterward is acquited of this Felony, so as he recouer dammages against his Lord for the false appeale, then the Villeine is infranchised, because of the iudgement of dammages to bee giuen vnto him against his Lord. And many other Cases and matters there bee by which a Villeine may bee enfranchised against his Lord, &c. But enquire of them.

(x) *Lib.8.fo.58.62. Becher's case. 3.H.6.13. Brooke tit. Nonsuit 1. 8.H.6.7. 30.E.3.12.*

betweene a Nonsuit and a Retraxit on the part of the Demandant or Plaintife is this. A Nonsuite is euer vpon a demand made when the Demandant or Plaintife should appeare, and he makes default. A Retraxit is euer when the demandant or Plaintife is present in Court (as regularly

gularly he is euer by intendement of Law vntill a day be giuen ouer, vnlesse it be when a verdict is to be giuen, for then he is demandable.) And this is in two sorts, one Positiue, and the other Positiue, Priuatiue, as vpon demand made, that he make default, and depart in despite of the Court, and then the entrie is, (y) Et postea eodem die deuenit ad barram prædict tenens, & præd' petens tunc solenniter exactus non venit, sed à secta sua prædicta in contemptum Curiæ se retraxit, ideo consideratum est, &c. Positiue, as when the entrie is, Et super hoc idem querens dicit, quod ipse non vult vlterius placitum suum prædictum prosequi, sed abinde omnino se retraxit, &c. ideo, &c. Another forme thereof is, quod idem querens fatetur se (seu cognouit se) vlterius nolle prosequi versus prædict. defend. &c. de placito prædicto. (z) A departer in despight of the Court is on the part of the Tenant, and is, when the Tenant or Defendant after appearance and being present in Court vpon demand makes departure in despight of the Court, and then the entrie is, Et prædict' tenens seu defendens licet solenniter exactus non reuenit, sed in contemptum Curiæ recessit & defaltam fecit, ideo, &c. It is called a Retraxit, because that word is the effectuall word vsed in the entrie, as before it appeareth, and it is euer on the part of the Demandant or Plaintife. (a) Another difference betweene a Retraxit and a Nonsuite is, that a Retraxit is a barre of all other Actions of like or inferiour nature: Qui semel actionem renunciauit amplius repetere non potest. But regularly a Nonsuite is not so, but that he may commence an action of like nature, &c. againe. For it may bee, that hee hath mistaken somewhat in that action, or was not prouided of his proues, or mistaking the day or the like. But yet for some speciall reasons, Nonsuite in some actions is peremptorie.

(y) Tr. 5 H.6. Rot. 320. In Com. Banco.

(z) F.N.B. 78 f. & 108. d. 19.E.2. Villen. 31.

(a) Lib. 8. vbi supra.

In a Quare impedit, if the Plaintife bee Nonsuite after appearance, the Defendant shall make a title, and haue a Writ to the Bishop (b) and this is peremptorie to the Plaintife, and is a good barre in another quare impedit, and the reason is for that, the Defendant had by iudgement of the Court a Writ to the Bishop, and the Incumbent that commeth in by that Writ shall neuer be remoued, which is a flat barre as to that presentation, and of this opinion is Littleton in our Bookes. And the same Law, and for the same reason it is in the case vpon a discontinuance.

(b) 5.E.3.35. 2.H.5. 31.H.6.15. 22.H.6.44 45. 33.H.6.1.55. 19.E.4.9. 21.E.4.2.b. & c.F.N.B.38.k Lib.7.fo.27.b. Sir Hugh Portmans case.

(c) In a Writ De Natiuo habendo, Nonsuit after appearance is peremptorie, for thereby the Villein is infranchised. And so it is if two be Plaintifes in a Natiuo habendo, if one be nonsuit this is the Nonsuite of both, and no sommons and seuerance doth lie in that case, albeit it be a reall action. And this is in fauorem libertatis, for in a Libertate probanda, Nonsuite after appearance is not peremptorie, neither is the Nonsuite of the one, the Nonsuite of both.

(c) 6.E.2.Vil.26. 12.E.2. ibid.28. 19.E.2.ibid.31. F.N.B.78.e. 4.E.2.Nonsuit 29.

(d) Nonsuite in an appeale of Murder, Rape, Robberie, &c. after appearance is peremptorie, and this is in fauorem vitæ, for if the Defendant be acquited, and take out proceſſe vpon the Statute of W.2. against the Abettors, or if he purchase his originall Writ, for that cause he may be Nonsuite.

(d) 9.H.4.1.12. Stawf. Pl.Cor. 148.a. & 171.c. 22.Ass.97. Fitz.Cor.184. 22.E.3.6. 47.E.3.16. 7.H.7.5. 40 E.3. Dein 77. 17.E.2.Coron.386. 3.E.2. Actions sur Lest.28.

(e) If the Plaintife in an appeale of Mayhem be Nonsuite after appearance it is peremptorie for the Writ saith, Felonice maihemauit, and therefore the Nonsuite is peremptorie.

(e) 43.Ass.39. 40.Ass.1.

(f) In an Attaint if the Plaintife after appearance be Nonsuite, it is peremptorie, and the reason is for the faith that the Law giues to the verdict, and for the terrible and fearefull iudgement that should be giuen against the first Iurie if they should be conuicted, and therefore vpon the Nonsuite, the Plaintife shall be imprisoned, and his pledges amerced. But if the proceſſe in an Attaint be discontinued, the Plaintife may haue another Writ of Attaint, because vpon the Nonsuite there is a iudgement giuen but not vpon the discontinuance. Note, it is truely said that Exceptio probat regulam, for these cases excepted stand vpon their special and particular reasons, and fall not within the generall reason of the rule. It is a generall rule, that Nonsuite before appearance is not peremptorie in any case, for that a stranger may purchase a Writ in the name of him that hath cause of action, as shall be said hereafter in this Section.

(f) 32.Ass 13.19 Ass 13. 20.E.3 ass int 42.22.E.3.7. F.N.B.108.d.

(g) In reall or mixt actions the Nonsuite of one Demandant is not the Nonsuite of both, but he that makes default shall be summoned and seuered, but regularly in personall actions, the Nonsuite of the one is the Nonsuite of both, vnlesse it be in certaine particular cases.

(g) 11.H.6.23.35. F.N.B.35.b. 19.E.3.tit. Seuer.14.3.E.2.Nonsuit 18. 19.E.3.Seuer.16.12.E.3.ib. 38.E.3.9. 29.H.6.45. 38.E.3.35. 41.E.3.Nonsuit 18. 45.E.3.10. 2.H.4.2.

(h) In personall actions brought by Executors there shall bee Sommons and seuerance because the best shall be taken for the benefit of the dead. And so it is in an action of Trespasse as Executor for goods taken out of their owne possession. Like Law in account as Executors by the receit of their owne hands.

(h) 42.E.3.13.48 E.3.14. 28.H.6.3.11.E 2.Seuer.26. 13.E.3.ib.15. 18.E.3.ib.28. 5.E.3.ibid.20. 7.E.3.12.

(i) In an Audita querela concerning the personaltie, the Nonsuite of the one is not the Nonsuite of the other, because it goeth by way of discharge and freeing of themselues, and therefore the default of the one shall not hurt the other.

(i) 15.E.3.Seuer.23. Lib.6.fo.25.Ruddocks case.

(k) In a Quid iuris clamat, the Nonsuite of the one is the Nonsuite of both, because the Tenant cannot attorne according to the grant.

(k) 20.E.3.Seuerance 17.

(l) Some actions follow the nature of those actions whereupon they are grounded as the Writs of Error, Attaint, Scire facias, and the like. If a reall action be brought by seuerall Præcipes against two or more, if the Demandant bee Nonsuite against one, he is Nonsuite a-

(l) 47.E.3.6.b. 47.Ass.3. 29.Ass.34. 7.H.4.45. 34.H.6.31. 25.H.6.19. 29.E.3.37. Lib.6.vb.supra. 22.H.6.42. 4 E.4.33. 19.E.2.Nonsuit 32. 18.E.3.ibid.31. 20.E.3.ib.26 27. 19.E.3.ibid.12. 3.E.3.ibid.17. 38.E.3.9. 20.H.6.45. 44.E.3.16. 19.E.3.Seuerance 16.

gainſt all, for as to the Demandant it is but one Writ vnder one Teſte. Note, Enurrance is twofold, viz. by Sommons ad ſequendum ſimul, and that is when one of the Demandants or Plaintifes neuer appeared, and by award of the Court of Nonſuit without any ſommons, and that is after appearance.

(m) The Kings Plaintife cannot bee Nonſuite, becauſe in iudgement of Law hee is euer preſent in Court, but the Kings Attorney, Qui ſequitur pro Domino Rege, may enter an vlterius non vult proſequi, which hath the effect of a Nonſuite, but in an information by an Informer, qui tam, &c. the Informer may be Nonſuited.

(m) 6.R.2. Nonſuit 13. 25.H.8. Nonſuit Br.68. 20.H.7.5.

(n) At the Common Law vpon euery continuance or day giuen ouer before iudgement, the Plaintife might haue beene Nonſuited, and therefore before the Statute of 2.H.4. after verdict giuen if the Court gaue a day to be aduiſed, at that day the Plaintife was demandable, and therefore might haue beene Nonſuite, which is now remedied by that Statute.

(n) 2.H.4.cap.7. 3.E.3.21. 47.E.3.1,2. 3.E.4.f.11.

(o) But after Demurrer in Law ioyned, if the Court doth giue a day ouer, at that day the Demandant or Plaintife is demandable, and therefore may be Nonſuite, for that is not holpen by any Statute.

(o) 9.H.5.5. 8.R.2. Nonſuit 34.

(p) And after an award to account, the Plaintife may be Nonſuite, and ſo note a diuerſity betweene an Interlocutorie award of the Court, and a finall iudgement.

(p) 1.H.7.1. 21.E.3.32. Lib.11.fo.39.41. Metcalfes caſe.

By theſe few inſtructions you ſhall the more eaſily vnderſtand the Bookes of tearmes and yeares, and other authorities of Law. And here (to returne to Littleton) it is to bee noted, that albeit the Lord be Nonſuite, yet the infranchiſement of the Villeine doth remayne for that grew by the appearance to the Writ, and cannot be taken away by the Nonſuite ſubſequent. So it is if the Writ doe abate, yet the infranchiſement remaynes.

¶ (q) *Apres apparance*, for otherwiſe a ſtranger may purchaſe a Writ in his name, and therefore Littleton materially added theſe words, after appearance.

(q) 7.H.4.8. 11.H.4.13. 9.E.4.23. 7.H.4.8.a. 7.H.7.6.b. 5.H.7.15.

¶ *Præcipe*. There bee three kind of Præcipes. 1. A Præcipe quod reddat, whereof Littleton here ſpeaketh. 2. A Præcipe quod permittat, and 3. A Præcipe quod faciat, whereof you may reade plentifully in the Regiſter, and Fitzherberts natura breuium, and belongs not properly to this Treatiſe.

¶ *Account*. Of this ſufficient hath beene ſaid before.

Vid.Sect.748. Lib.4.fo.80. Nehereaſe. F.N.B.145.

¶ *Couenant*. Conuentio. Hereof there bee two kinds, viz. a Couenant perſonall, and a Couenant reall: and a Couenant in Deed, and a Couenant in Law.

¶ *Ou il fuit endite de ceo*. (r) For if the Villeine be not firſt indited of it then vpon the acquitall of the Villeine, the Villeine ſhall recouer dammages againſt the Lord by the ſtatute of W.2.(r) quia multi per malitiam, &c. and conſequently ſhall be enfranchiſed. But if the Villeine be formerly indited of the felony, then though the Villeine be acquited vpon the Appeale, he ſhall recouer no dammages againſt the Lord. For whereſoeuer the Lord giueth to the Villeine a iuſt cauſe of action hee is enfranchiſed. (ſ) And therefore if the Lord kill his Villeine his ſonne and heire ſhall haue an appeale, and thereby his heire ſhall be enfranchiſed, becauſe the offence of the Lord gaue to the heire a iuſt cauſe of action againſt the Lord.

(r) W.2.cap.12. 22 Aſſ.p.39. 33.H.6.2. 14.H.7.2. 40.Aſſ.18. 40.E.3.42.

(ſ) Kelway.134.

Sect. 209.

¶ Q*Ve il ad eſtre Cuſtome, &c.*

Here ſome may obiect that ſuch a Cuſtome may haue a lawfull beginning for Littleton in the beginning, of this Chapter, Sect.174 alloweth that (a) a freeman may take lands of the Lord to bee holden of him, that is to pay a fine for the marriage of his Sonne or Daughter, and therefore (b) ſome haue thought that ſuch a Cuſtome generally within the Manor ſhould bee good. But the

(a) 10.E.3.23. Roger de Valoys Caſe. 15.E.3.tyde.33.

(b) 34.H.6.15.a. per Litt.

¶ ITem ſi Seignior dun manor voile preſcriber, que il ad eſtre cuſtome deins ſon manor de temps dont memory ne curt, que cheſcun Tenant deins meſme le mannor, q̃ maria ſa file a aſcun home ſans licence de le ſeignior del mannor

ALſo if the Lord of a Mannor will preſcribe that there hath beene a cuſtome within his Mannour, time out of minde of man, that euery Tenant within the ſame Mannor, who marieth his Daughter to any man without licence of the Lord of the

nor, ferra fine, et ont faire fine al Seignior del mannor pur l' temps esteant, cest prescription est void. Car nul doit faire tiels fines forsq; tantsolemēt villeins. Car chescun franke home poit frankement marier sa file a que pleist a luy & sa file. Et pur ceo que cest prescription est encounter reason, tiel prescripc̄ en boyd.

Mannour, shall make fine, and haue made fine to the Lord of the Mannor for the time being, this prescription is voyd: For none ought to make such fine but onely Villeines. For euery free man may freely marrie his daughter to whom it pleaseth him and his daughter: and for that this prescription is against reason, such prescription is voyd.

answer is, that though it may be so in a particular case vpon such a speciall reseruation of such a fine vpon a gift of land, yet to claime such a fine by a generall custome within the Mannor, is against the freedome of a Freeman that is not bound thereunto by particular Tenure. But a custome may be alledged within a Mannor, (b) That euerie tenant (albeit his person bee free) that holdeth in bondage, or by native Tenure, the freehold being in the Lord, shall pay to the Lord for the marriage of his daughter without licence, a Fine: and it is called Marchet, as it were a Chete or fine for marriage. And here Littleton saith, that none ought to pay such fines but Villeines, (that is) either Villeines of blood, or freemen holding in Villenage or base Tenure. So note a diuersitie betweene a freeholder and a free man holding in Villenage: Villeines vse to pay to their Lords in acknowledgement of their bondage for their seuerall heads, and thereupon it is called Cheuage Cheuagium of the French word Chiefe, as it were the seruice of the head. Of which Bracton saith, (c) Chiuagium dicitur recognitio in signum subiectionis & dominij de capite suo. And sometimes it is written Chiuage, but more properly Chiefage. (d) Cheuagium signifieth also a great Misprision for any subiect to take summes of money, or other gifts yearely in name of Cheuage, because they take vpon them to be their chiefe heads or Leaders.

(b) 43.E.3.5. 14.H.6.15.

(c) Bracton lib. 1.cap.18. Britton fol.79.b.

(d) 27.Ass.44.

¶ *Pur ceo que cest prescription est encounter reason ceo est voyd.* This containes one of the maximes of the Common Law, viz. that all customes and prescriptions that be against reason, are voyd.

Sect. 210.

Mes en l' Coūty de Kent, ou tres tenements, sont tenus en Gauelkind la ou per le custome & vse d' temps dont memorie ne curt, les fits males doient ouelment enheriter, ceo custome est allowable, pur ceo que il estoit oue ascun reason, pur ceo que chescun fits est auxy graunde gentl' home come leigne fits est,

But in the County of Kent where lands and tenements are holden in Gauelkinde, there where by the custome and vse out of minde of man the issues male ought equally to inherite, this custome is allowable, because it standeth with some reason, for euery sonne is as great a gentleman as the eldest sonne is and perchance will grow

¶ En (e) le County de Kent. For that in no Countie of England lands (f) at this day bee of the nature of Gauelkind of common right, sauing in Kent onely. But yet in diuers parts of England, within diuers mannors and Seigniories the like custome is in force.

(e) Vide Lestatute de Consuetudinibus Kanciæ ann 21.E.1. 2.E.3.12.3.E.3.21.38. 23.Ass.pl.12. 8.E.3.42.b.

(f) Vide Mirror cap.1.§.3.

¶ *En Gauelkinde*, that is, Gaue all kind: for this custome giueth to all the sons alike.

¶ *Les fitz males inheriter.* And this is the generall custome extending to sonnes. But yet (g) by custome when one brother dieth without issue, all the other

(g) 23.Ass.pl.21.

other brethren may inherit.

¶ *Chescun fitz est auxy grand gentlehome come leigne fitz est.* By this it appeareth, that Gentrie and Armes is of the nature of Gauelkind, for they descend to all the sonnes, euerie sonne being a Gentleman alike. which Gentrie and Armes doe not descend to all the brethren alone, but to all their posteritie: but yet Iure primogenituræ, the eldest shall beare as a badge of his birthright, his fathers Armes without any difference, for that as Littleton saith Sectione he is more worthy of bloud; but all the yonger brethren shal giue seuerall differences, & additio probat minoritatem, and (h) hæreditas inter masculos iure ciuili est diuidenda.

(h) Fortescue cap. 40.

¶ *Ou autermẽt peraduenture il ne puissoit tielment cresser.* The reason of this is rendred by the Poet:

Horace. *Haud facile emergunt quorum virtutibus obstat*
Res angusta domi. ——

But now by the Statute of 31.H.8 a great part of Kent is made descendable to the eldest sonne, according to the course of the Common Law, for that by the meanes of that custome, diuers antient and great Families after a few discents came to verie little or nothing.

31.H.8.ca.3.V.18.H.6.ca.1.

In plures quoties riuos deducitur amnis,
Fit minor, ac vndâ deficiente, perit.

Sect.211.

¶ *PEr custome appel Burgh English.* Of this custome Littleton hath spoken before in the chapter of Burgage. And in our bookes there is a speciall kind of Borough English, (i) as it shall descend to the yonger sonne, if he be not of the halfe bloud, and if he be, then to the eldest sonne.

V.Sect.165.

(i) 32.E.3.tit.Age 81.

(k) Mich.10.Ia.Eliot: cast in Briefe de Faux iudgement.

(k) Within the Mannor of W. in the Countie of Werke, there is such a custome, That if a man haue diuers daughters, and no sonne, and dieth, the eldest daughter shall onely inherit; and if hee haue no daughters, but sisters, the eldest sister by the custome shall enherit, and sometime the yongest. And diuers other customes there be in like cases. And herewith agreeth Britton, who saith, (l) De terres des ancienes demeynes soit vse solonque le antient vsage del lieu, dount en ascun lieu le tient leu pur vsage: que le heritage soit departable entre touts les enfants freres & sores, & en ascun lieu que le eigne auera tout, & en ascun lieu que le puisne frere auera tout.

(l) Brit.187.b.

¶ *Pur cause de son iuuentute poet le pluis meins de touts ses freres luy mesme aidre. &c.* Here by (&c.) are implied those causes wherefore a youth is lesse able to ayd himselfe, &c. which the Poet briefely and pithily expresseth thus:

Imberbis

Imberbis Iuuenis tandem Custode remoto,
Gaudet Equis, Canibusque & Aprici gramine Campi,
Cereus in vitium flecti, Monitoribus asper,
Vtilium tardus provisor, prodigus aeris,
Sublimis, cupidusque, & amata relinquere pernix. Horace.

And againe, no liuing creature more infirme than Man:

Nil homine infirmum, tellus animalia nutrit.
Inter cuncta magis. —— Homer.

Sect. 212.

¶ MEs si home voit prescriber, que si alcuns aūts fueront sur les demesnes de son mannor la dammag̃ feasants, que le Seignior del mannor pur le temps esteant, ad vse eux de distreyner, & le distresse retayne tanque fine fuit fait a luy pur le dammag̃ a sa volunt, cest prescription est void, pur ceo que il est encounter reason, que si tort soit fait a vn home, que il de ceo serr̃ son Judge demesne: Car per tiel voy sil auoit dammages forsque al value dun mail, il puissoit assesser & aūs pur ceo C.l. que serroit encounter reason. Et issint tiel prescription, ou ascūs auk prescription vse (si ceo soit encounter reason) ceo ne doit estre allow deuaunt Judges: Quia malus vsus abolendus est.

BVt if a man wil prescribe, that if any catel were vpō the demeanes of the Manor, there doing dammage, that the Lord of the Mannor for the time beeing hath vsed to distreyne them, and the distresse to retaine till fine were made to him for the dammages at his will, this prescription is voyd: because it is against reason, that if wrong bee done any man, that hee thereof should be his owne Iudge, for by such way, if hee had dammages but to the value of an halfepeny, he might assesse and haue therefore C. li. which should bee against Reason. And so such prescription, or any other prescription vsed, if it bee against Reason, this ought not, nor will not be allowed before Iudges, *Quia malus vsus abolendus est.*

¶ *Est encounter reason que si tort soit fait a vn home, que il de ceo serra son iudge demesne.* For it is a Maxime in Law, Aliquis non debet esse iudex in propria causa. * And therefore a fine leuied before the Bayliffes of Salop, was reuersed, because one of the Bailifes was partie to the fine, quia non potest esse iudex & pars.

10.E.3.23. 4.E.3.14. 7.E.3.24. 38.E.3.18. 2.H.3.4. 3.H.4. 8.H.6.19. 5.H.7.9.b.

* Hil.4.H.4. Coram Rege Salop.

¶ Malus vsus abolendus est: And euerie vse is euill, that is (as our Author saith) against reason; Quia in consuetudinibus non diuturnitas temporis, sed soliditas rationis est cōsideranda.

And by this rule cited by our Author at the Parliament holden at Kilkenny in Ireland, Lionel Duke of Clarence beeing then Lieutenant of that Realme, the Irish customs called there the Brehon Law, (for that the Irish call their Iudges, Brehons) was wholly abolished, for that (as the Parliament sayd) it was no Law, but a lewd custome, & malus vsus abolenduseſt.

An.40.E.3 at Kilkenny.

The Brehon Law.

Vid.Sect.265.

But our Student must know, That King Iohn in the twelfth yeare of his raign went into Ireland, and there by the aduice of graue and learned men in the Lawes whom hee carried with him, by Parliament de communi omnium de Hibernia consensu ordained and established, that Ireland should bee gouerned by the Lawes of England, which

which of many of the Irish men, according to their owne desire, was joyfully accepted and obeyed, and of many the same was soone after absolutely refused, preferring their Brehon Law before the iust and honourable Lawes of England. Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. Salutem, Satis vt credimus vestra audiuit discretio, quod quando bonæ memoriæ Iohannes quondam Rex Angliæ pater noster venit in Hyberniam, ipse duxit secum viros discretos & legis peritos, quorum communi consilio, & ad instantiam Hybernensium statuit & præcepit leges Anglicanas in Hybernia, ita quod leges easdem in Scripturas redactas reliquit sub sigillo suo ad Scaccarium Dublin.

Rot. patent. 11. H. 3. Lib. 7. fo. 22. b. Calvyns case.

Rot. patent. 18. H. 3. M. 17. N. 21.

Rex Comitibus, Baronibus, militibus, & liberis hominibus & omnibus alijs de terra Hiberniæ salutem. Quia manifestè esse dinoscitur contra coronam & dignitatem nostram & consuetudines & leges regni nostri Angliæ quas bonæ memoriæ Dominus Iohannes Rex pater noster, de communi omnium de Hybernia consensu, teneri statuit in terra illa quod placita teneantur in curia Christianitatis de aduocationibus Ecclesiarum & capellarum vel de laico feodo vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus prohibentes quatenus huiusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis & Coronæ nostræ præiudicium, scituri pro certo, quod si feceritis, dedimus in mandatis Iusticiario nostro Hyberniæ, Statuta curiæ nostræ in Anglia contra transgressiones huius mandati nostri cum Iusticia procedat, & quod nostrum est exequatur. In cuius, &c. Teste Rege apud Winchcomb, 28. die Octobris, anno regni nostri 18. Et mandatum est Iusticiario Hyberniæ, per literas clausas quod prædictas literas patentes publice legi & teneri faciat.

Rot. Patent. 30. H. 3.

Rex, &c. pro communi vtilitate terræ Hyberniæ, & *pro Vnitate terrarum*, prouisum est, quod omnes leges & consuetudines quæ in regno Angliæ tenentur, in Hybernia teneantur, & eadem terra eisdem legibus subiaceat, ac per easdem regatur, sicut Iohannes Rex cum illic esset, statuit & firmiter mandauit. Ideo volumus, quod omnia brevia de communi iure quæ currunt in Anglia similiter currant in Hybernia sub nouo sigillo Regis: In cuius, &c. Teste me ipso apud Woodstocke. Wherein it is to be obserued, That vnion of Lawes is the best meanes for the vnion of Countries. * Vna vt eadem lex esse debet tam in Regno Angliæ quam Hyberniæ. (m) Terra Hyberniæ inter se habet Parliamentum & omnimodas curias prout in Anglia, & per idem Parliamentum facit leges & mutat leges, & illi de eadem terra non obligantur per statuta in Anglia, quia hij non habent Milites Parliamenti.

* *Trin. 13 E. 1. Coram Rege in Thesaur. in longo placito.*
(m) *2. R. 3 fo. 12. In camera stellata. 1. H. 7. 3.*

By an Act of Parliament (called Poynings Law) holden in Ireland in the tenth yeare of Henrie the seuenth, it is inacted, That all statutes made in this Realme of England before that time, should be of force and be put in vre within the Realme of Ireland, which (though it be by way of digression) is not vnnecessarie for our Student to know, But now let vs heare our Author.

CHAP. 12. Of Rents. Sect. 217.

SOme haue deuided Rents into foure kindes, viz. Rent seruice, Rēt charge Rent distreynable of common right (whereof somewhat shall be said in this chapter) and Rent secke.

(a) *Fleta, lib. 3. ca. 14. Britton, ca. 41. Mirror. ca. 2. §. 16. Pl. Com. 132. b. * Lib. 10. 128. Clun's case.*

Rent. In Latyn (Redditus, (a) by some Dicitur à redeundo, quia retro it, & quotannis redit. * And others say it is deriued of reddere, for that the Rent is reserued out of the profits, of the land, and is not due till the tenant or Lesse take the profits, for reddendo inde or soluendo, or reseruando inde, or the like, (b) is as much to

(b) *Pl. Com. 138. 139 &c. In Brewings & Reasons case. 35. H. 6. 34.*

LE Roys maners de Rents y sont, cestascauoir, Rent seruice, Rent charge, & Rent secke: Rent seruice est lou le tenant tient sa terre de son Sñr y fealtie, & certain Rent, ou per homage, fealtie, & certain Rent, ou y auꝰ seruices & certain Rent: & ſi rent ſeruice

THree manner of rents there bee, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where the tenāt holdeth his land of his Lord by fealtie, and certain rent, or by homage, fealty, and certaine rent, or by other seruices, and certaine rent, and if rent seruice at any day that

soit

soit a aleun iour (que doit estre pay) adeterre, le Sir poit distrainer pur ceo de common droit.

it ought to bee payed, bee behinde, the Lord may distraine for that of common right.

say as the Tenant or Lesse shall pay so much out of the profits of the lands, for Reddere nihil aliud est quam acceptum aut aliquam partem eiusdem restituere. Seu reddere est quasi retro dare, and hereof commeth Redditus for a Rent.

Here note for the better vnderstanding of ancient Records, Statutes, Charters, &c. Gabel, or Gauell, gablum, Gabellū, Gabellettū, Galbellettum, and Gauillettū, Doe signifie a Rent, Custome, Dutie, or seruice, yelded or done to the King or any other Lord, as Wallingford continet 276. Hagas. i. domos reddentes 9. liberas de gablo. i. de redditu. And Oxford, hæc vrbs reddebat pro theolonio & Gablo regi 20. l. & Sextarios mellis, cometi Alpharo 10. libras. And this is the legall signification thereof.

Domesday. Statutum de gauilette anno 10. E. 2.

¶ *Rent seruice.* It is called a Rent seruice, because it hath some corporall seruice incident vnto it, which at the least is fealtie, as here it appeareth.

¶ *Sa terre.* (c) A Rent seruice cannot be reserued out of any inheritance but such as is manurable whereinto the Lord may enter and take a distresse, as in Lands and Tenements, Reuersions, remainders, and as some haue said, out of the herbage of lands, and regularly not out of any inheritances incorporeall, or that lye in grant. (d) By act of Law one rent or seruice may issue out of another, as if A before the statute of Quia emptores terrarum had giuen lands to B. to hold to him by fealtie, and ten shillings rent, and B. had made a feoffment in fee to C. &c. whereby there was a Mesnalty created, in this case C. should hold of B. either by the same seruices the Law created, or such as he specially reserued and B. did by operation of Law hold those seruices of A. by fealty and ten shillings rent, that is to say, rent and seruice out of rent and seruice, and if the rent be behinde, the Lord paramount may distreine vpon the land for his rent, for both Mesnalty and Seigniory doe issue out of the land, the Mesnaltie immediatly, and the Seigniory mediatly, which is worthy of due consideration and obseruation.

Vid Sect. 217.
(c) 44. E. 3. 45. lib. 5. fo. 4. Seignior Mountioyes case. 9. ass. 24. 30. ass. 5. 17. E. 3. 75. Lib. 7. fo 23. Bues case. Pl. Com. 139.
(d) 3. H. 6. 21. 5. H. 7. 36. 21 H. 7. 39 1. H. 4. 82. 10. H. 6. 12. 19. E. 3. tit Gard. 40. 21. H. 6. 11.

¶ *Certaine rent.* (e) For the Rent must be certaine, or which may be reduced to a certaintie, for Id certum est, quod certum reddi potest. (f) Continetur carta redtendo inde annuatim ad tales terminos vel faciendo inde talia seruitia, vel tales consuetudines, quæ omnia debent esse certa & in carta expressa, &c. But of this I haue spoken, Sect. 136. And the rent may aswell be in deliuery of Hens, Capons, Roses, Spurres, Bowes, Shafts, Horses, Hawkes, Pepper, Comine, Wheat, or other profit that lyeth in render, office, attendance, and such like: as in payment of money. (g) But a man vpon his feoffment or conueyance cannot reserue to him parcell of the Annuall profits themselues, as to reserue the vesture or herbage of the land or the like, for that should be repugnant to the grant, Non debet enim esse reseruatio de proficuis ipsis, quia ea conceduntur, sed de redditu nouo extra proficua.

(e) *Britton, fo. 100. a.*
(f) *Fleta, lib. 3. ca. 14.*
(g) 38. H. 6. 38. a.

¶ *Poet distreine pur ceo.* For where there is fealtie, &c. incident to the rent, there is a distresse incident also thereunto (h) But it is to bee vnderstood that for a rent or seruice, the Lord cannot distreyne in the night, but in the day time, and so it is of a rent charge: but for Damage feasaunt one may distreine in the night, otherwise it may be the beasts will be gone before he can take them.

(h) *Mirror. ca. 2. §. 16. 10. E. 3. Auowry 137. 11. H. 7. 5.*

¶ *De comon droit.* Of common right, (i) that is by the common Law, so called because the Common Law is the best and most common birth-right, that the subiect hath for the safegard and defence not only of goods, lands, and reuenues, but of his wife and children, his body, fame and life also. So as the meaning of Littleton in this particular case is, that the Lord may distreine for this rent of common right, that is, by the Common law without any particular reseruation or prouision of the partie. And it is to be obserued that the Common Law of England sometime is called right, sometime common right, and sometime Communis justitia. In the graund Charter, the Common Law is called right, rectum. Nulli vendemus, nulli negabimus aut differemus justitiam vel rectum. In the statute of W. 1. cap. 1. it is called Common droit. En primes voet le roy, & commande que le peace de St. Esglise & de la terre soit bien garde & maintaine en touts points, & que common droit soit fairs a touts auxibien aux poures, come aux riches saunce regard de nulluy, which agreeth with the ancient law in the time of King Edgar, Porro autem has populo quas seruet proponimus leges, primum publici iuris beneficio quisquam fruitur, idque ex æquo & bono siue is diues siue inops fuerit jus redditur. And Fleta saith, Item quod pax Ecclesiæ & terræ inuiolabiliter obseruetur, & quod communis justicia singulis pariter exhibeatur. And all the Commissions & Charters for execution of Iustice, are Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ. So as in truth

(i) *W. 1. ca. 1. 2. H. 4. ca. 1. 7. H. 4. ca. 1. 4. H. 8. ca. 8.*

Lamb. fo. 78. inter Leges Regis Edgari. Fleta, lib. 1. ca. 29.

truth Iuſtice is the daughter of the Law, for the Law bringeth her forth. And in this ſence being largely taken, aſwell the ſtatutes and cuſtomes of the Realme, as that which is properly the Common law is included within Common droit. Littleton in this his Treatiſe nameth Common droit fiue times.

Vid.Sect.214.216.226. 252.331.

Sect. 214.

35.H.6.34.

¶ *Auns fait.* For it is a rule in Law that a rent Seruice may bee reſerued without Deed.

Vide Sect.131.132.

¶ *En meſme le manner ſi leaſe ſoit fait, &c.* For theſe be Rents Seruices, becauſe fealtie is incident to theſe Rents, for (as it hath beene ſaid before) a Leſſee for life or yeares ſhall doe fealtie. And if a man make a Leaſe at will, reſeruing a Rent, the Leſſee ſhall not doe fealtie, and yet the Leſſor ſhall diſtraine for the rent of common right.

¶ *Rendant*, commeth of the word reddo, .i. rem pro re dare, and ſignifieth yeelding or repaying, but of this I haue ſpoken before in this Chapter. Sect.213.

¶ Et ſi home voyloit doner terres ou tenements a vn auter en taile, rendant a luy certain Rent p an, il de cõmon droit poit diſtreiñ pur le rent adarere, coment que tiel done fuit fait ſans fait, pur ceo que tiel Rent eſt Rent ſeruice. En mẽ le maner eſt, ſi leas ſoit fait a vn hõe pur terme de vie, ou dauter vie, rendant al leſſor certaine Rent, ou pur terme de ans rendant certaine Rent.

AND if a man will giue Lands or Tenements to another in the taile, yeelding to him certaine rent by the yeare, hee of common right may diſtraine for the rent behind, though that ſuch gift was made without deed, becauſe that ſuch Rent is Rent Seruice: In the ſame mãner it is, if a leaſe be made to a man for life or the life of another rendring to the Leſſor certaine Rent, or for tearme of yeares rendring Rent.

Section. 215.

¶ *Reuertion.* Reuerſio commeth of the Latine word reuertor, and ſignifieth a returning againe, and therefore reuerſio terræ eſt tanquam terra reuertens in poſſeſſione donatori ſiue hæredibus ſuis poſt donum finitum, &c. as in the caſes that Littleton here hath put.

¶ *Il conient que le reuerſion, &c. ſoit en le donor ou leſſor, &c.*

This is not to be vnderſtood only of a reuerſion immediatly expectant vpon the gift or leaſe. For if a man maketh a gift in tayle, the remaynder in tayle reſeruing a rent, and keepe the reuerſion in himſelfe, this is a Rent Seruice.

¶ *Reſernant.* Reſeruer commeth of the Latine

¶ Mes ẽ tiel cas ou home ſur tiel done ou leaſe voile reſeruer a luy rent ſeruice, il couiẽt que le reuerſiõ de les terres & teneñts ſoit en le donor ou leſſor, car ſi home voile fair feoffement en fee, ou voile doner terres en taile, le remaindre ouſtre en fee ſimple ſans fait, reſeruant a luy certaine rent, tiel reſeruãt eſt void, pur ceo que nul reuerſion remaine en le donor, & tiel tenant tient

BVt in ſuch caſe where a man vpon ſuch a gift or Leaſe will reſerue to him a Rent ſeruice, it behoueth that the reuerſion of the Lands and Tenements be in the Donor or Leſſor. For if a man will make a feoffment in fee, or will giue Lands in taile, the remainder ouer in fee ſimple without Deed, reſeruing to him a certaine Rent, this reſeruation is void, for that no reuerſion remaines in the Donor, and ſuch

tient la terre immediatiñ de l seignior deque son donor tenoit, &c.

renant holds his Land immediately of the Lord of whom his Donor held, &c.

word Reseruo, that is to prouide for store. As when a man departeth with his land, hee reserueth or prouideth for himselfe a rent for his owne vse and profit. And sometime it hath the force of sauing or excepting: So as (k) sometime it serueth to reserue a new thing, viz. a Rent, and (l) sometime to except part of the thing in esse that is granted.

(k) 8.E.4.4f. 26.Ass.Pl.66.
(l) 35.H.6.34.

And it is to be vnderstood that in the case of the gift in tayle, lease for life or yeares, the fealtie is an incident inseparable to the reuersion, so as the Donor or Lessor cannot grant the reuersion ouer, and saue to himselfe the fealtie or such like seruice, but the Rent he may except, because the Rent although it be incident to the reuersion yet it is not inseparably incident. If a man maketh a gift in tayle without any reseruation, the Donee shall holo of the Donor by the same seruices that he held ouer. (m) But otherwise it is of an Estate for life or yeares, for there if he reserueth nothing, he shall haue fealtie only which is an incident inseparable to the reuersion, as hath beene said.

(m) Litt.fol.4. Old tenures 5. 38.E.3.7. 33.H.6.7.

¶ *Le remaindre ouster en fee simple sans fait.* Here it appeareth that if a man maketh a gift in tatle, the remainder in fee without Deed, (n) the remainder is good, and passeth out of the Donor by the liuerie of seisin, and so it is of a lease for life or yeares the remainder ouer in fee for the particular estate and the remainder to many intents and purposes, make but one estate in iudgement of Law. Vide Sect 60.

(n) 40.E.3.10. 10.E.4.1. 12.E.4 16. 15.E.4.18. 18.E.4.12. 18.H.8.4. 3.H.7.13. F.N.B.219. 11.H.4.39. 38.E.3.36. 44.E.3.8.

¶ *Remaindre*, In legall Latine is remanere comming of the Latine word remaneo, for that (o) it is a remainder or remnant of an estate in Lands or Tenements expectant vpon a particular estate created together with the same at one time as in the cases here of Littleton appeareth.

(o) Lib.2.fol.51. Cholmeleis case.

Section 216.

¶ ET ceo est per force de lestatute de Quia emptores terrarum, car deuant le dit estatute si hõe feisoit vn feoffement en fee simple, per fait ou sans fait, rendant a luy & a ses heires certaine rent, ceo fuit rent seruice, & pur ceo il puissoit distreine de common droit, & sil fuit nul reseruation dascun rẽt ne d ascũ seruice, vncore le feoffee tenust del feoffor per autiel seruice que le feoffer tenust oustre d son Seignior procheine Paramont.

AND this is by force of the Statute of *Quia emptores terrarum*, for before that Statute, if a man had made a feoffment in fee simple by deed or without deed yeelding to him and to his heires a certaine rent, this was a rent seruice, and for this hee might haue distrained of common right. And if there were no reseruation of any Rent nor of any Seruice, yet the Feoffee held of the Feoffor by the same Seruice as the Feoffor did hold ouer his Lord next Paramount.

¶ Quia emptores terrarum.

Hereof is spoken before in the chapter of Frankalmoigne Section 140.

¶ *Per fait ou sans fait, &c.* For all rent Seruices may bee reserued without Deed (as hath beene said) and as it appeareth here.

And at the Common Law if a man had made a feoffment in fee by Parol he might vpon that feoffment haue reserued a Rent to him and his heires because it was a rent seruice, and a tenure thereby created.

¶ *Et sil fuit nul reseruation, &c. le feoffee tenust del feoffor per autiels seruices, &c.* This is euident and agreeth with our Bookes (*) that in this case the Law created the tenure, wherein it is to be obserued how the Law regardeth equitie and equalitie without any prouision or reseruation of the partis,

(*) Britton fol.100. 2.E.3.33. 25.E.3.gard.21. 49.E.3.10. 22.Ass.Pl.53. 7.H.4.14. 23.E.3.auowrie 255. 4.H.6. Littl.cap.seule. Sect.

Section 217.

Britton. fol. 100. Fleta. lib. 3. cap. 14. Vide Sect. 370.

¶ *Per fait indent.* It cannot bee a Deed indented, vnlesse it be actually indented, for albeit the wordes of the Deed bee Hæc Indentura, &c. yet if it be not indented in Deed it is no Indenture, but if the Deed bee indented, albeit the words of the deed be not hæc Indentura, yet it is an Indenture.

(p) 8.E.4.8. 11.H.7.22. 35.H.6.34. 20.E.4.13. 17.E.3. 12.H.4.17.

And it is holden that (p) if a feoffment in fee bee made by Deed poll reseruing a Rent this reseruation is good, for when the Feoffee accepts the Deed and Liuerie of the land he agreeth to the rent, and the rent is reserued by the words of the Feoffor, and not by the grant of the Feoffee; but of this more hereafter. In the meane time it is to bee noted, that of ancient time a Deed indented was called Charta cyrographata, or Charta communis, because each partie had a part. And a Deed poll was called Charta de vna parte (q) Chartæ autem de pura donatione de simplici penes donatorium & eius hæredes debet remanere, communes vero duplicari debent ita quod quilibet habet partem suam. Vel si vna sit tantum, tunc in æqua manu communis amici vtriúsq; ponatur saluo custodiend' dum cuilibet partiũ necesse fuerit exhibẽdũ.

(q) Fleta lib. 3. cap. 14. Britton. fol. 100.

¶ *Reseruant a luy.* (r) Note, it is a maxime in Law that the rent must be reserued to him from whom the state of the Land moueth, and not to a stranger. (s) But some doe hold that otherwise it is in the case of the King.

(r) 12.E.2.Fessments 8. 18.E.3.Ass. 381.

(s) 35.H.6.36.

¶ *Et tiel rent est rent charge.* It is called a Rent charge, because the Land for payment thereof is charged with a distresse. If it be to the whole value of the Land, or to the fourth part of the value, then the rent is called a fee farme. Here Littleton putteth his Case, and so did here in the

Old tenures. Britton. cap. 66. 164. F.N.B. 210. Bract. 86.

¶ Mes si home per fait endent a cel iour, fait tiel done en fee taile, & remainder ouster en fee, ou lease a terme de vie, le remainder ouster en fee, ou vn feoffment en fee & per vn lendenture il reserue a luy, & a ses heires vn certaine rent, & que si le rent soit aderere, q̃ bien lirroit a luy & a ses heirs a distreiner, &c. tiel rent est rent charge, pur ceo que tiel x terres ou tenements sont charges oue tiel distresse per force de le scripture tantsolement, & nemy ỏ common droit. Et si tiel home sur fait endent reserua a luy, & a ses heires certain rent sans ascun tiel clause mise en le fait, que il poit distreine, donque tiel rent est rent secke, pur ceo que il ne poit vener de auer le rent, si ceo soit deuy per meane de distresse, & sil ne fuit vnques en cest cas seisie de la rent, il en sans remedie, come serra dit apres.

But if a man by deed indented at this day maketh such a gift in fee taile, the remainder ouer in fee, or a lease for life, the remainder ouer in fee, or a feoffement in fee, and by the same indenture hee reserueth to him and to his heires a certaine rent, and that if the rent be behind, that it shall be lawfull for him and his heires to distreine, &c. such a rent is a rent charge, because such Lands or Tenements are charged with such distresse by force of the writing only, and not of common right. And if such a man vpon a deed indented reserue to him and to his heires a certaine rent without any such clause put in the deed, that hee may distreine then such rent is rent secke, for that hee cannot come to haue the rent if it be denied by way of distres. And if in this case hee were neuer seised of the rent, he is without remedie, as shall be said hereafter.

the next Section before, of a clause of distresse generally granted. (t) A man granted a rent out of certaine land, pro concilio impenso & impendendo, To haue and to hold to him and to his Assignes for terme of his life, payable at foure Feasts in the yeare, and for default of payment vpon demand, it should be lawfull for him to distreyne; the Grantee granted the rent ouer: the Assignee after one of the dayes demanded the rent, and distreyned, and the distresse adiudged lawfull, for he needs not make a demand at any of the dayes, as in the case of re-entrie, but he may demand it when hee will, for it is onely to entitle him to his remedie for his meere dutie.

(t) Li.7.fo.28.b. Maunds case H.43.El.in Com. Banco, Rot. 1108. inter Maund & Gregorie. M.40. & 41.El.in Com. Banco inter Stanly & Read. 18.El.Dyer 348.

¶ *Distreyne. &c.* Hereby (&c.) is implied what things are distreynable, which elsewhere is expressed at large. Also where the distresse is to be taken in the same land, and in some other, which with many differences is set downe in his proper place. *Vi.Sect.221.*

¶ *Il serra sans remedie.* Note that vpon a reseruation of a Rent vpon a feoffement in fee by deed indented, (w) the feoffor shall not haue a writ of Annuitie, because the words of reseruation, as Reddendo, soluendo, faciendo, tenendo, reseruando, &c. are the words of the Feoffor, and not of the Feoffee, albeit the Feoffee by acceptance of the state, is bound thereby.

(w) 33.E.3.Annuitie 52. 1.H.4.5. 26.Ass.Pl.66. 21.E.4.

And where Littleton putteth his case, when a reseruation is made vpon an estate that passeth by liuerie, the same Law it is, if a man at this day doe bargaine and sell his land by deede indented and inrolled according to the Statute, a rent may be reserued thereupon, for albeit an vse had onely passed by the Common Law, yet now by the Statute of 27.H.8. cap.10. the vse and possession passe together, and so it was adiudged. * And so it is of a grant of a reuersion or remainder, and any other conueyance of Lands or Tenements, whereby any estate doth passe.

* Mich.39. & 40.El.in Com. Banc.inter Wilkes & Tilney.

Sect. 218.

CAr vry ſi home ſeiſie de certain terre graunt per vn fait polle, ou per indenture vn annual rent iſſuant hors de meſme la terre a vn auter en fee ou en fee taile, ou pur terme de vie, &c. ouesq; clauſe de diſtreſſe, &c. donques ceo ē rēt charg̃ & ſi le graunt ſoit ſans clauſe d̄ diſtres, donques il eſt Rent ſecke. Et nota, que Rent ſecke idem eſt quod redditus ſiccus, pur ceo que nul diſtres eſt incident a ē. quod redditus ſiccus. pounds it himſelfe.

ALſo if a man ſeiſed of certaine land, grant by a Deede poll, or by Indenture, a yearely rent to be iſſuing out of the ſame land, to another in fee, or in fee taile, or for terme of life, &c. with a clauſe of diſtres &c. then this is a rent charge, and if the Graunt bee without clauſe of diſtreſſe, then it is a Rent ſecke. And note that Rent Secke *idem eſt quod redditus ſiccus*: For that no diſtreſſe is incident vnto it.

¶ *Seiſie de Terre.* (x) Note that a rent cannot be granted out of a Piſcharie, a Common, an Aduowſon, or ſuch like incorporeall inheritances, but out of lands or tenements whereunto the Grantee may haue recourſe to diſtreyne, or which may be put in view to the recognitors of an Aſſiſe, as hath beene ſaid before in this chapter. And though it be out of lands or tenements, (z) yet it muſt be out of an eſtate that paſſeth by the conueyance, (as by all Littletons examples appeareth) and not out of a right: As if the Diſſeiſee releaſe to the Diſſeiſor of land, reſeruing a rent, the reſeruation is voyd: Et ſic de ſimilibus.

(x) 32.E.3 tit.Scir.fac.100. 40 E.3. Pl.Com.139.

Vid.Sect.213.

(z) 10.E.4.3.b. 33.H.6.5. 50.E.3.9. 8.E.4.8. 5.Ed.3. Fines 1.9.E.3.7. 46.E.3.27. 21.H.6.9.Tempr E.1.fo.423

¶ *Grant per fait.* * Alſo a man may haue a Rent by preſcription.

* 19.E.3.Title 34.

¶ *Rent ſecke* idem eſt This needs no explanation, for Littleton ex-

Sect. 219.

¶ *RENT Charge.* Here it appeareth by Littleton, that this Prima facie is a Rent charge, wherof in this Chapter shall be spoken more at large.

And so it is of a Rent Secke.

¶ *Home grant.* Put case that A. be seised of lands in fee, and he and B. grant a Rent charge to one in fee, this Prima facie is the grant of A. and the confirmation of B. but yet the Grantee may haue a writ of Anuitie against both.

(a) 16.E.2.tit. Annuity 47. Vid.Sect.314.

(a) Two men grant an annuitie of twentie pounds per annum, to another, although the persons be seuerall, yet he shall haue but one Annuitie: but if the grant be, Obligamus nos & vtrumq; nostrum; the Grantee may haue a writ of Annuitie against either of them, but hee shall haue but one satisfaction.

¶ *Briefe de Annuitie* is a writ for the recouerie of an Annuitie.

(b) Doct.& Stud.ca.3. 17.El.Dyer 344.b. 45.E.3.Executor.72.

(b) An Annuitie is a yearely payment of a certaine summe of money, granted to another in fee for life or yeares, charging the person of the grantor onely.

(c) 3.E.6.Dyer 65. And Sergeant Bendloes reporteth, That so was the opinion of the Court.

(c) But not onely the Grantee, but his heire and his and their Grantee also shall haue a writ of Annuitie.

(d) 2.H.4.13. Dyer 17.El.344.b.

(d) But if a Rent charge be granted to a man and his heires, he shall not haue a writ of Annuitie against the heire of the Grantor, albeit he hath Assets, vnlesse the grant be for him and his heires.

¶ Item si home granta per son fayt vn rent charge a vn auter, & le rent est arere, le grantee poet eslier sil voet suer vn briefe de Annuitie de ceo enuers l'grantor ou distreyner pur le rent arrere, & l'distresse retaine tanq; il soit de ceo pay, mes il ne poit faire ne auer ambideux insemble, &c. Car sil recouer per briefe Dannuitie, donques la terre est discharge, de le distresse, &c. Et sil ne suist Briefe de Annuitie, mes distreine pur les arrerages, & le Tenant suist son Replegiare, & donques le grantee auowa le prisel de le distresse en la Terre en Court de Record, donques est la terre charge, & la person del grantor discharg' d Action d Annuity.

Also if a man grant by his Deed a Rent charge to another, and the rent is behind, the Grantee may chuse whither he will sue a writ of Annuitie for this against the Grantour, or distreine for the rent behind, and the distresse detaine vntill hee bee payd, but he cannot do or haue both together &c. for if he recouers by a Writ of Annuitie, then the Land is discharged of the distresse, &c. And if he doth not sue a Writ of Annuitie, but distreine for the arrerages, and the Tenant sueth his Repleuin, and then the Grantee auow the taking of the distresse in the land in a Court of Record, then is the land charged, and the person of the Grantor discharged of the Action of Annuitie.

¶ *Poet eslier.* The Grantee hath election to bring a writ of Annuitie, and charging the person onely to make it personall, or to distreyne vpon the land, and to make it reall.

But if a man grant a Rent charge to a man and his heires, and dieth, and his wife bring a writ of Dower against the heire, the heire in barre of her Dower, claimes the same to be an Annuitie, and no Rent charge, yet the wife shall recouer her dower, for hee cannot determine his election by claime, but by suing of a writ of Annuitie (as Littleton saith) neither can the heire haue after the endowment an Annuitie for the two parts, for that should not be according to the deed of grant, for either the whole must be a rent charge, or the whole an Annuitie. But Littleton is to be vnderstood with some limitation:

(e) 29.Ass.p.23.

(e) for of a rent granted for ouerture of partition, a writ of Annuitie doth not lie, because it is of the nature of the land discended. Also if such

such a rent as may be granted without deed, a Writ of Annuitie doth not lie, though it be granted by Deed

(f) And here is to be noted, That here is no election giuen of two seuerall things, as if the grant were of an Annuitie, or a Robe yearely, &c. for there the Grantor had election at the day to deliuer which he would. But here is two remedies giuen for one yearely summe, and consequently the Grantee shall at any time haue election to take which of the remedies he will, for in all cases where seuerall remedies be giuen, the partie to whom the Law giueth the remedies, it giueth him withall election to take which of the remedies he will.

(f) *Sir Rowland Heywards case, li.2. fo.36. 28.E.3.98. 41.E.3.10.a. 2.H.4.12. 6.H.4.10. 36.H.6.10. 9.E.4.46. 21.E.4.55.b. 1.E.5.1. F.N.B.121.*

¶ *Mes il ne poet faire ou auer ambideux ensemble.* For then he should recouer one thing twice, which should be a double charge to the Grantor.

Note, as to elections, these diuersities following:

Lib.2.fo.36,37. in Sir Rowland Heywards case.

First, when nothing passeth to the Feoffee or Grantee before election to haue the one thing or the other, there the election ought to be made in the life of the parties, and the Heire or Executor cannot make election. But when an estate or interest passes immediately to the Feoffee, Donee, or Grantee, there election may be made by them, or by their Heires or Executors.

Secondly, when one and the same thing passeth to the Donee or Grantee, and the Donee or Grantee hath election in what manner or degree he will take this, there the interest passeth immediately, and the partie, his heires, or Executors, may make election when they will.

Thirdly, when election is giuen to seuerall persons, there the first election made by any of the persons shall stand.

Fourthly, In case an election be giuen of two seuerall things, alwayes he which is the first agent, and which ought to doe the first act, shall haue the election: As if a man granteth a Rent of twentie shillings, or a robe to one and to his heires, the Grantor shall haue the election, for he is the first Agent, by payment of the one, or deliuerie of the other. So if a man maketh a Lease, rendring a rent or a robe, the Lessee shall haue the election causa qua supra, and with this agree the bookes in the * margent. (g) But if I giue vnto you one of my horses in my Stable, there you shall haue the election, for you shall be the first Agent by taking or seisure of one of them. And if one grant to another twentie loads of Hazill, or twentie loads of Maple to bee taken in his wood of D. there the Grantee shall haue election, for he ought to doe the first act, s. to fell and take the same.

* 9.E.4.36.b. 13.E.4.4.b. l.5.E.4.6.b. 11.E.3 Annuitie 27. 11. Ass.p.8. 29.Ass.55. 3.E.3.tit. Ass.175. 43.E.3.tit Barre 194.

(g) 2 H 7.23.a.

Fifthly, when the thing granted is of things annuall, and are to haue continuance, there the election remaineth to the Grantor, (in case where the law giueth to him election) as well after the day, as before, otherwise it is when the things are to be performed vnica vice. And therefore if I grant to another for life, an Annuitie or a Robe at the feast of Easter, and both are behind, the Grantee ought to bring his Writ of Annuitie in the disiunctiue, for if hee bring his Writ of Annuitie for the one onely, and recouer, this iudgement shall determine his election for euer; for he shall neuer haue a Writ of Annuitie afterwards, but a Scire facias vpon the sayd iudgement. Which reason Fitzherbert in his Natura Breuium not obseruing, held an opinion to the contrarie. But if I contract with you to pay vnto you twentie shillings or a robe at the Feast of Easter, after the Feast you may bring an Action of Debt for the one or for the other.

9.E.4.36. 13.E 4.4. and the other abouesaid Bookes.

Sixtly, The Feoffee by his act and wrong may lose his election, and giue the same to the Feoffor: As if one infeoffe another of two acres, To haue and to hold the one for life, and the other in tayle, and he before election maketh a feoffement of both, in this case the Feoffor shall enter into which of them he will, for the act and wrong of the Feoffee.

¶ *Sil recouer en Briefe de Annuitie donques est la terre discharge de distresse.* Here is to be obserued, That this determination of the election of the Grantee must be by action or suit in Court of Record; (h) for albeit the Grantee distreyne for the Rent, yet he may bring a Writ of Annuitie and discharge the land. And Littleton putteth his case here surely vpon a Recouerie in a Writ of Annuitie. (i) But if the Grantee doth bring a Writ of Annuitie, & at the returne thereof appeare and count, this is a determination of his election in Court of Record, albeit he neuer proceedeth any further. (k) As if a wife be endowed ex assensu patris, and the husband dieth, the wife hath election either to haue her Dower at the Common Law, or ex assensu patris, if she bring a Writ of Dower at the Common Law, and count, albeit she recouer not, yet shall she neuer after claime her Dower ex assensu patris.

(h) 17.El.Dyer 344.b.

(i) *F.N.B.152.a. 5.H.7.33.b.*

(k) 12.E.2.Dower 158.

(l) So if the Grantee bring an Assise for the rent, and make his plaint, hee shall neuer after bring a Writ of Annuitie. But the purchasing of a Writ of Annuitie, and entrie of it in Court of Record, or of an assise, is no determination of the election, because an estranger may purchase a Writ in the name of the Grantee, and enter it of Record, but if the Grantee appeare thereunto, &c. then this doth amount to a determination of his election, as hath beene sayd,

(l) 10.E.4.17.

Glanuill lib. 12. ca. 12. Merlbr. ca. 21. W. 1. ca. 16. 17. W. 2 ca 39. Fleta, lib. 2. ca. 40.

¶ *Son replegiare.* Littleton spake immediatly before of Vn briefe Dannuity, but here he saith, Son replegiare, because goods may be repleuied two manner of wayes, viz by writ, and that is by the Common Law, or by the pleinte, and that is by the statutes for the more speedy hauing againe of their cattell and goods. ¶ Replegiare lyeth, as Littleton here teacheth vs, where goods are distreyned and impounded, the owner of the goods may haue a writ De Replegiari facias, where by the Sherife is commanded, taking suretees in that behalfe, to redeliuer the goods distreyned to the owner, or vpon complaint made to the Sherife he ought to make a Repleuy in the Countrey. Replegiare is compounded of Re, and plegiare, as much as to say, as to redeliuer vpon pledges or sureties; and in the statute of Merlebridge, Deliberare is vsed for Replegiare. (m) And the Sherife ought to take two kinde of pledges, one by the Common Law, and they be Plegij de prosequendo, and another by the statute, viz. Plegij de retorno habendo. Vide Sect. 58. what things may lawfully be distreyned, whereupon a Replegiare may be sued. The formes of the writ you shall reade in the Register and F.N.B. *

Merlbr ca. 21. 21. H. 6. Returne de Vic. 17. (m) W. 2. ca. 2. Fleta lib. 4. ca. 5. 4. H. 6. 15.

* Regist. F.N.B. 68.

(n) It is a generall rule that the Plaintife must haue the property of the goods in him at the time of the taking. (o) But yet if the goods of a villeine be distreyned, the Lord of the villeine shall haue a Repleuy, because the bringing of the Repleuy amounts to a clayme in Law and vests the property in the Plaintife. But in that case if the goods of the villeine be taken by a trespasse the Lord shall haue no Repleuy, because the villeine had but a right.

(n) 3. E. 3. 74. 6. H. 4. 2. & 39. 9. H. 6. 39. 20. H. 6. 19. (o) 33. E. 3. Repleu. 43. 42. E. 3. 18. 9. H. 6. 25. F.N.B. 69. F. 6. H. 7. 9. 19. E. 3. Repl. 32.

(p) But there is two kinde of properties, a generall propertie, which euery absolute owner hath, and a speciall propertie as goods pledged or taken to manure his lands or the like, and of both these a Replegiare doth lye.

(p) 42. E. 3. 18. 21. H. 4. 17. 23. 47 E. 3. 12. 48 E. 3. 20. 7. H. 4. 17.

And albeit it be prouided by the Statute of Marlebridge, cap 22. quod vicecomes post querimoniam inde sibi factam ea sine impedimento vel contradictione eius qui dicti auerii cepere deliberare possit, &c. (q) Yet where the Defendant clayines property, the Sherife cannot proceed, for it is a rule in Law, that propertie ought to be tryed by writ. And therefore in that case where the tryall is by pleint, the Plaintife may haue a writ De proprietate probanda directed to the Sherife to trie the propertie, and if thereupon it be found for the Plaintife, then the Sherife to make deliuerance, (for so be the words of the writ) and if for the Defendant, he can no further proceed, but that is but an enquest of office, and therefore if thereby it be found against the Plaintife, yet he may haue a writ of Repleuy to the Sherife, and if he returne the claime of propertie, &c. yet shall it proceed in the court of Common pleas where the propertie shall be put in issue and finally tried; And the Sherife may take a pleint vpon the said act out of the County, and make repleuyn presently, for it should be inconuenient for the owner to forbeare his cattell till the County day.

Marlbr. ca. 22.

(q) 30. E. 3. 22. 31. E. 3. Repleu 35 & 4. 7. H. 4 26. 28. 3. H. 6. Prop. Prob 5. 1. E. 4. 9. 21. E. 4 64. 2. Eliz. Dier, 173. 21. E. 4. 66.

(r) It is to be noted that a man cannot clayme property by his Bailife or seruant, and the reason is for that if the clayme fall out to be false he shall be fined for his contempt, which the Lord cannot be vnlesse he maketh clayme himselfe, for Nemo punitur pro alieno delicto.

(r) 8. E. 3. 38. 11. H. 4. 4. 17. E. 2. Propr. Prob. 6.

In a speciall case a man may haue a Repleuyn of goods not distreyned, as if the Meine put in his cattell in lieu of the cattell of the tenant parauaile, that he is bound to acquite, he shall haue a repleuyn of those cattell that neuer were distreyned.

34. H. 6. 47.

If a man by his Deede graut a Rent with clause of distresse, and graut further, that he shall keepe the goods distreyned against gages and pledges, vntill the Rent bee payd, yet shall the Sherife Repleuy the goods distreyned, for it is against the nature of such a Distresse to be irrepleuisable, and by such an entention the currant of Repleuyns should be ouerthrowne to the hindrance of the Common wealth, and therefore it was disallowed by the whole Court, and awarded that the Defendant should gage deliuerance, or else goe to prison. And Bracton is of the same opinion, for he saith, Eodem modo de via obstructâ, per breue quod iusticiet propter communem vtilitatem, ne transeuntes ire diu impediantur, quia hoc esset commune damnum, & in hoc vicecomes & Iusticiarij faciant sicut super detentionem aueriorum contra vadium plegij, propter communem vtilitatem, ne animalia diu inclusa pereant, which in mine opinion is an excellent point of learning.

31. E. 3. Gage deliuer 5.

Bracton, lib. 4. fo. 233. a. & b.

If the beastes of diuers seuerall men be taken, they cannot ioyne in a Repleg. but euery one must haue a seuerall Repleuyn: And so in a Repleuyn it is a good plea to say that the property is to the Plaintife and to a stranger, and where there be two Plaintifes, that the propertie is to one of them.

28. E. 3. 92. 3. H. 4. 12. 34. H. 6. 37. 2. E. 4. 23.

There is also a writ De homine replegiando. But Littleton is ready to giue you further instruction, therefore heare him.

Regist. fo. 133. Brast. fo. 121. & 154. W. 1. ca 11. Fleta, lib. 2. ca. 2. F.N.B. 66. b.

¶ *Et auowa le prise, &c. en court de record.* Here it appeareth that an auowry in Court of Record which is in nature of an action is a determination of his election before any iudgement giuen. And this is a good proofe of that which hath beene formerly said of the writs of Annuity and Assise.

Electio

Electio semel facta & placitum testatum non patitur regressum. 21.H.6.24. per Newton.
Quod semel placuit in electionibus amplius displicere non potest. 27.H.6.4.

If a Rent charge be granted to A. and B. and their heires, A. distreyneth the beasts of the Grantor and he sueth a Repleuin, A. auoweth for himselfe and maketh conusance for B. A. dyeth and B. suruiueth, B. shall not haue a Writ of Annuity, for in that case, the election and auowry for the Rent of A. barreth B. of any election to make it an Annuity, albeit he assented not to the auowry.

But here is another diuersity to be obserued betweene the case aforesaid of the grant of the Rent where he (as hath beene said) may make it either reall or personall, and when a man may haue election to haue seuerall remedies for a thing that is meerely personall or meerely reall from the beginning. As if a man may haue an action of account or an action of debt at his pleasure, and he bringeth an action of account and appeare to it, and after is Nonsuite, yet may he haue an action of debt afterwards because both actions charge the person. The like law is of an Assise and of a Writ of entrie in the nature of an Assise and the like. 28.E.3.98.b. 27.E.3.89.b.

Sect. 220.

¶ Item, si home voile q̄ vn auter aueroit vn rent charge issuant hors de la terre, mes il ne voile q̄ la person soit charge en ascun maner p̄ briefe dannuitie, donques il poit auer tiel clause en la fine de son fait. Prouiso semper, quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam, per breue, vel actionem de annuitate, sed tantummodo ad onerandum terras, & tenementa mea de annuali redditu predict', &c. Donques la terre est charge, & le person del grantor discharge.

ALso if a man would that another should haue a Rent charge issuing out of his land but would not that his person bee charged in any manner by a Writ of Annuity, Then hee may haue such a clause in the end of his deed. Prouided alwaies that this present writing nor any thing therein specified shal any way extend to charge my person by a Writ or an action of Annuity, but only to charge my lands and tenements with the yearely rent aforesaid, &c. Then the land is charged and the person of the grantor discharged.

¶ By this Section it appeareth, that when in a generall grant, the Law doth giue two remedies, that the Grantor may prouide that the Grantee shall not vse one of them and leaue the partie to the other. But where the Grantee hath but one remedy, there that remedy cannot be barred by any prouiso, for such a prouiso should be repugnant to the Grant. 28.H.8.Dier.9.b.

¶ *De annuali reditu, &c.* Hereby (&c.) and the consequent of this Section be implyed diuers excellent points of learning, viz. If a man by his Deede granteth a Rent charge out of the Mannor of Dale (wherein the Grantor hath nothing) with such a prouiso that it shall not charge his person albeit the repugnancie doth not appeare in the Deed yet the prouiso taketh away the whole effect of the Grant, and therefore is in iudgement of Law repugnant, for vpon the matter it is but a grant of an Annuitie, prouided that it shall not charge his person, for which cause our Author putteth his case of a Rent charge issuing truly out of land. *So it was resolued by the Iustices in H.8. as Iustice Spilman reporteth. 9.H.6.53.*

But if a man by his Deede grant a Rent charge out of land, prouided that it shall not charge the land albeit the Grantee hath a double remedy (as hath beene said) yet the Prouiso is repugnant, because the land is expresly charged with the Rent, but the Writ of Annuity is but implyed in the Grant, and therefore that may be restrained without any repugnancie, and sufficient remedie left for the Grantee, for which cause our author putteth his case of the restraint of bringing a Writ of Annuity. And yet in some case where there is a Prouiso

in the Deed that the grantee shall not in any sort charge the person of the Grantor generally, notwithstanding the person of the Grantor shall be charged: As if a man grant a Rent charge out of certaine lands to another for life with such a Prouiso, the Rent is behinde, the Grantee dyeth, the Executors of the Grantee shall haue an action of debt against the Grantor, and charge his person for the arrerages in the life of the Grantee, because the Executors haue no other remedy against the Grantor for the arrerages, for distreyne they cannot, because the estate in the Rent is determined, and the Prouiso cannot leaue the Executors without remedy, as appeareth by that which hath beene said. And therefore our Author putteth his case of a Rent charge continuing. And here is to be obserued that this word (Prouiso) hath diuers operations, sometime it worketh a qualification or limitation, and so it is taken here and often in our bookes: Sometime a Condition, and sometime a Couenant, whereof you shall reade more hereafter, Sect.320.

6.Eliz. Dier 227.

¶ *En le fine de son fait.* Here Littleton putteth his case of one Deed, but though the grant be generall, and want such a Prouiso, yet may the Grantee by another Deed by way of Defeasance grant that he shall not charge the person of the Grantor, and that if he bring a writ of Annuity, that the Rent shall cease

32.Ass.p.1. Vide Sect.384.

¶ *Nec aliquid in eo specificatum non aliqualiter se extendat. &c.* Here is to be obserued a double negatiue, Nec, and Non, which in Grammaticall construction amounteth to an affirmatiue, for Negatio destruit negationem & ambo faciunt affirmatiuum, yet the Law that principally respecteth substance, doth iudge the Prouiso to be a negatiue according to the intent of the parties, and not according to Grammaticall construction, to the end the Prouiso may take effect, and the like you shall finde hereafter in Littleton. * Mala Grammatica non vitiat cartam. Here our Author putteth his case of one Grantor, put then the case, that A. and B. being ioyntenants of lands in fee by their Deede grant a Rent charge out of those lands, prouided that the Grantee shall not charge the person of A. In this case if the Grantee bringeth a writ of Annuity, he must charge the person of B. only.

* Lib.3.ca. de cond. Sect.362.

Sect. 221.

¶ Que *si* A. *de* B. Here wanteth words to preceade these, viz. que il grant al *A.* de *B.* &c. que si *A.* de *B.* &c. as it appeareth in the originall so it appeareth in the close of this Section, viz. Mes granta tantsolemẽt que il poet distreyner. Also without such a grant the clause should be imperfect.

¶ Item, si home fait tiel fait en tiel maner, q̃ si A. de B. ne soit annuelmẽt pay al feast de Noel pur terme de sa vie xx.s. de loyal mony, que adonques bien lirroit a m̃ celuy A. de B. a distreiner pur ceo en le manor de F. &c. ceo est bone rent charge, pur ceo q̃ l' manor est charge oue le rent per voy de distres, & vncore la person ó celuy que fait tiel fait, est discharge en tiel case de action dannuitie, p̃ ceo que il ne granta per son fait ascun

Also if one make a Deed in this manner, that if *A.* of *B.* be not yearely payed at the feast of Christmasse for terme of his life xx.s. of lawfull money, that then it shall be lawfull for the said *A.* of *B.* to distreyne for this in the manner of *F.* &c. this is a good rent charge, because the Mannor is charged with the rent by way of distresse, & yet the person of him which makes such deed is discharged in this case of an action of Annuitie, because hee doth

¶ Qui

¶ *Pur ceo que le mannor est charge oue le rent per voy de distresse.* And yet no Rent is expressly granted out of the Mannor. But by the grant that hee shall distreyne for such a yearely summe of money in iudgement of Law the Mannor is charged with the Rent, but the person of the Grantor cannot be charged because he expressly granteth no Rent, for that would charge his person, but that the Grantee should distreyne, &c. which only chargeth the land.

Annuitie a le dit A. & B. mes granta tantsolement, que il poit distrainer pur tiel Annuitie, &c.

not grant by his Deed any Annuitie to the said *A.* of *B.* but granteth only that he may distreine for such Annuitie, &c.

¶ *Que il poet distreine pur tiel Annuitie, &c.* **hereby** (&c.) **many** points worthy of obseruation are implyed, viz. if a man seised of Lands in fee, bindeth his goods and lands to the payment of a yearely Rent to

18. *Ass.p.*1. 18.*E.*3.32. 3.*Ass.*7. 3.*E.*3.12. 10.*Ass.*24. 31.*Ass.p.*17. 33.*Ass. Annuitie* 52. 16.*E.*3.*grant.*64.

A. de B. this is a good Rent charge with power to distraine, albeit, there be no expresse words of charge, nor to distraine. Or in these words, Obligo Manerium meum de C. & omnia bona in dicto Manerio existent' A. de B. in annuo redditu de xx.s. ad distringend' per Baliuum Domini Regis pro redditu prædicto By this grant a Rent charge issueth out of the Mannor, and where the words bee ad distringendum per Baliuum Domini Regis, this is for the aduantage of the Grantee. And therefore the Kings Baily should be but his Minister to distreine for his Rent, and that which he may do by his seruant he may do by himselfe, or by any other of his seruants.

If a man by Deed grant a Rent of fortie shillings to another out of his Mannor of Dale, to haue and to perceiue to him and his heires, and grant ouer by the same Deed, that if the Rent be behind, that the Grantee shall distreine in the Mannor of Sale (be the Mannor of Sale in the same Countie or in another Countie, and bee this grant by one Deed or diuers Deedes) the Rent is only issuing out of the Mannor of D, and it is but a paine, that hee shall distreine in the Mannor of S. but both the Mannors are charged, the one with the Rent, & the other with a distresse for the rent, the one issuing out of the Land and the other to bee taken vpon the Land. And whereas our Author puts his case of a grant for life. So it is if I grant to you, that you and your heires, or the heires of your bodie shall distreine for a Rent of fortie shillings within my Mannor of S. this by construction in Law shall amount to a grant of a Rent, out of my Mannor of S. in Fee Simple or Fee Taile for if this shall not amount to a grant of a Rent, the grant shall bee of little force or effect if the Grantee shall haue but a bare distresse and no Rent in him. For then hee shall neuer haue an Assise of this, &c. And this is the reason, that it is so often ruled and resolued, (*) that this amount to a grant of a Rent per construction of Law, Vtres magis valeat, and all this is necessarily implyed in the (&c.) and in this case the Grantee shall not haue a Writ of Annuitie as our Author sayth. And whereas our Author putteth his case where the distresse is to be taken in the same Land out of which the Rent by construction of Law is issuing, hereby is implyed that if a Rent be granted, out of the Mannor of D. and the Grantor grant ouer, that if the Rent bee behind, the Grantee shall distreine for the same rent in the Mannor of S. this is but a penaltie in the Mannor of S. for three causes:

*Lib.*7.*fol.*23.24. *in Butlers case.*

(*) 3.*E.*3.12. 3.*Ass.p.*7. 14.*Ass.p.*14. 16.*E.*3.*tit. grant* 64. 18.*E.*3.32. 26.*Ass.* 38. 30.*Ass.*12. 46.*E.*3.18. 32. 8.*H.*4.19. 9.*H.*6.9. 22.*H.*6.11.

First, The Law needs not to make construction that this shall amount to a grant of a Rent for here a Rent is expresly granted to bee issuing out of the Mannor of D. and the parties haue expresly limited out of what land the Rent shall issue, and vpon what Land the distresse shall be taken, and the Law will not make an exposition against the expresse words and intention of the parties when this way stands with the rule of the Law. Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.

Secondly, If in this case this shall amount to a grant of a Rent out of the Mannor of S. then the Grantor shall be twice charged. For if the Grantee bringeth a Writ of Annuitie this shall extend only to the Mannor of D. For vpon the grant of a distresse in the Mannor of S. no Writ of Annuitie lyeth, because the Mannor of S. is only charged, and not the person of the Grantor as to this; and for this cause the bringing of the Writ of Annuitie cannot discharge the Mannor of S. of any Rent: and so the Law by construction against the words and the intention of the parties shall doe iniurie to the Grantor to charge him twice.

Thirdly, If in such case the Mannor of S. in which the distresse is only limited, shall bee in another Countie, then it hath beene often adiudged, that the Rent shall not issue out of the same, but the distresse shall be as a meane, and remedie to compell the Tenant of the Land to pay the Rent. And it was said, that there was no diuersitie in reason, that the Law in construction shall make the Rent to be issuing out of this when it lyeth in the same Countie, and not when it lyeth in seuerall Counties for the words in both cases are all one, and there is no reason to say that he shall fayle of a recouerie by Assise. And the Bookes in 1.Ass.p.10 and 1.E.3.21. and other Bookes doe not say that the Rent issueth in this case out of both, but that the Land in which the distresse shall be taken is charged, and this is true, for it is charged with the distresse. And inasmuch as it was charged with the distresse, their opinion was that the Tenants of both of them shall be named in the Assise. And the opinion of Finchden in 41.E.3. 13 was affirmed to bee good Law, That if the Mannor of D. out of which the Rent is granted be recouered by an elder Title, that all the Rent is extinct, but if the Mannor of S. in which the distresse is limited, be euicted, yet all the Rent remayns.* So if the grantee purchase parcell of the Mannor of S. the Rent is not extinct, for that the Rent issueth only out of the Man-

Vide Butlers case. *Lib.*7 *fol.*3. 1.*Ass.p.*10. 1.*E.*3.31. *Vide* 9.*E.*3.13. 31.*Ass.*27. 17.*E.*4.6. 10.*Ass.*4. 10 *E.*3.18. 2.*E.*2.*Ass.*360. 1.*Ass.*10. 3.*Ass.*7. 32.*H.*6. 27. 22.*Ass.*66. 31.*Ass.*27. 29.*E.*3.*Assise* 366. 41.*E.*3.13. *per Finchden.* **Vide* 17.*E.*4.6. *semblable case.* *Vide Sect. grant. sequen.*

not of D. And it is ſaid that if a man grant a Rent out of three Acres, and grant ouer, that if the Rent be behind, hat he ſhall diſtreine for the Rent in one of the Acres; this Rent is entire and cannot be a Rent ſecke out of two Acres, and a Rent charge out of the third Acre, and therefore it is a Rent ſecke for the whole, and yet he ſhall diſtreine for this in the third Acre. So if a Rent be granted to two and to their heires out of an Acre of Land, and that it ſhall be lawfull for one of them and his heires to diſtreine for this in the ſame Acre, this is a Rent ſecke, for inſomuch as they ſtand ioyntly ſeiſed of one intire Rent, it cannot be as to the one a Rent ſecke, and as to the other a Rent charge, and this diſtreſſe is as an appurtenant to the Rent: and therefore if he which hath the Rent dieth, the ſuruiuor ſhall diſtreine, and if both grant ouer the rent to another, he ſhall diſtreine for this. But if a man grant a rent out of Blacke Acre to one and to his heires, and grant to him that he may diſtreine for this in the ſame Acre for terme of his life, this is a Rent charge for his life, and a Rent ſecke after, diuerſis temporibus. Otherwiſe it is if the diſtreſſe be limited for certaine yeares in the ſame Land, there this remaynes a Rent ſecke intirely, for that the fee and the freehold is ſecke in ſuch caſe.

If a man ſeiſed of Lands in fee, and poſſeſſed of a tearme for many yeares grant a Rent out of both for life, in tayle or in fee, with clauſe of diſtreſſe out of both, this Rent being a freehold doth iſſue only out of the freehold, and the lands in leaſe are only charged with a diſtreſſe. But if he had granted the Rent only out of the Lands in leaſe for terme of the life of the Grantee, this had iſſued out of the tearme, and the Land had beene charged during the tearme if the Grantee liued ſo long.

12.H.6.10.b. If a man be ſeiſed of twentie Acres of Land, and grant a Rent of twentie ſhillings percipiend' de qualibet acra trē meæ (that is) out of euery one Acre of my Land, this is a ſeuerall grant out of euery ſeuerall Acre, and the Grantee ſhall haue twentie pounds in all.

A. doth bargaine and ſell land to B. by Indenture, and before inrollment they both grant a Rent charge by Deed to C. and after the Indenture is inrolled ſome haue ſaid, that this Rent charge is auoyded, for ſay they it was the grant of A. and by the inrollment it hath relation to the deliuery, which (ſay they) ſhall auoyde the grant, notwithſtanding the confirmation of the other which had nothing in the Land at that time. But the grant is good, and after the inrollment by the operation of the Statute, it ſhall be the grant of B. and the confirmation of A. But if the Deed had not beene inrolled, it had beene the grant of A. and the confirmation of B. and ſo quacunque via data the grant is good.

Sect. 222.

CExtinct. Commeth of the Verbe Extinguere, to deſtroy or put out, and a Rent is ſaid to bee extinguiſhed when it is deſtroyed and put out.

¶ *Apportion.* This commeth of the word Portio quaſi partio, which ſignifieth a part of the whole, and Apportion ſignifieth a Diuiſion or Partition of a Rent, common, &c. or a making of it into parts.

(a) *Doct. & Stud. lib. 2. cap. 16. 21.H.7.2. 21.E.3.58.* (a) The reaſon of this extinguiſhment is becauſe the Rent is intire, and againſt common right, and iſſuing out of euery part of the Land, and therefore by purchaſe of part it is extinct in the whole and cannot bee (b) apportioned, but by act in Law it may, as hereafter ſhall be ſaid. (c) If the Grantee of a Rent charge purchaſe parcell of the Land, and the Grantor by his Deed

(b) *30.Aſſ.12. 9.Aſſ.22.*

(c) *46.E.3.32.14.Aſſ. Aſſ.p.14. 26.Aſſ.38.*

CItem, ſi home ad vn rēt charge a luy & a ſes heires iſſuant hors de certein terr', il purchaſe aſcun parcel de cel a luy, & a ſes heires, tout le rent charge eſt extinct, & lannuitie auxy, pur ceo que rent charge ne poit per tiel maner eſtre apportion. Mes ſi home que auer rent ſeruice, purchaſe parcel de la terre dont le rent eſt iſſuant, ceo nextiendra tout mes pur le parcel, car rent ſeruice en tiel cas poit

ALſo if a man hath a Rent charge to him and to his heires iſſuing out of certaine land, if hee purchaſe any parcell of this to him and to his heires, all the Rent charge is extinct, and the Annuitie alſo, becauſe the Rent charge cannot by ſuch manner bee apportioned. But if a man which hath a Rent Seruice purchaſe parcell of the land out of which the Rent is iſſuing, this ſhal not extinguiſh all, but for the parcell. For

poit estre appoztion solonque le value de la terre. Mes si vn tient sa terre de son Seignioz per le seruice de render a son Seignioz añuelmẽt a tiel feast vn chiual, ou vn esperon doz ou vn Cloue, Gylofer, & huiusmodi, si en tiel cas le Seignioz purchase parcel de la terre, tiel seruice est ale, pur ceo que tiel seruice ne poit estre seuer, ne appoztion.

a Rent Seruice in such case may be apportioned according to the value of the Land. But if one holdeth his land of his Lord by the seruice to render to his Lord yearely at such a Feast a Horse, a golden Speare, or a Cloue, Gilliflower, and such like, if in this case the Lord purchase parcell of the Land, such Seruice is taken away, because such seruice cannot be seuered nor apportioned.

reciting the said purchase of part granteth that hee may distreyne for the same Rent in the residue of the land, this amounteth to a new grant, and the same Rent shall bee taken for the like Rent or the same in quantity. And so it is (d) if a man by Deede granteth a Rent charge out of his land to a man for life, and granteth further by the same Deede that hee and his heires may distreyne in the land for the same Rent, this amounteth to a new grant of a Rent in fee simple.

(d) 8.H.4.19

But yet a Rent charge by the act of the partie may in some case be appoztioned. As if a man hath a Rent charge of xx.shillings, he may release to the Tenant of the land x.shillings or more or lesse, and reserue part, for the Grantee dealeth only with that which is his owne, viz. the Rent, and dealeth not with the Land as in case of purchase of part. And so was it holden in the Common place, Hill.14 Eliz. which I my selfe heard and obserued. So (e) if the Grantee of an Annuity or Rent charge of xx.pound grant, x.pound parcell of the same Annuity or Rent charge, and the Tenant attorne, hereby the Annuity or Rent charge is deuided.

Hill.14.Eliz.
(e) 9.H.6.12.53. F.N.B.152.D.E.

And (f) when the Rent charge is extinguished by his purchase of part of the land, hee shall neuer haue a Writ of Annuity, because it was by the grant a Rent charge, and he hath discharged the land of the Rent charge by his owne act by purchase of part. And therefore he cannot by writ of Annuity discharge the land of the distresse as Littleton hath before said. But if the Rent charge be determined by the act of God or of the Law, yet the Grantee may haue a Writ of Annuity. As if Tenant for another mans life by his Deed grant a Rent charge to one for 21.yeares, Cesty que vie dieth, the Rent charge is determined, and yet the Grantee may haue during the yeare a Writ of Annuity for the arrerages incurred after the death of Cesty que vie, because the Rent charge did determine by the act of God and by the course of Law, Actus legis nulli facit iniuriam. The like Law is if the land out of which the Rent charge is granted be recouered by an elder title, and thereby the Rent charge is voyded, yet the Grantee shall haue a Writ of Annuity, for that the Rent charge is auoyded by the course of Law, and so it was holden in Wards Case aboue remembred against an opinion Obiter in 9.H.6 42.a.

(f) 14.E.4.4. 22.E.4.Lodowicke case.51. 7.H.6. 9.H.6.1. 5.H.7.33

Wards case cited in lib.2. In Heywards case, fo.35.

9.H.6.42.a.

¶ *Carrent seruice in tiel case poet este apportion.* Whether this apportion was at the Common Law or by the force of the Statute of Quia emptores terrarum, hath beene a question in our bookes. * And it appeareth by Littleton that it was so at the Common Law, for when he citeth any thing prouided by any Statute, he citeth the Statute, as he hath done this very act before. 2. Littleton speaketh here indefinitely of Rent seruice, and there be diuers kindes of Rent seruices which are not within that Statute, and yet such Rent seruices are apportionable by the Common Law, as if a man maketh a Lease for life or yeares reseruing a Rent, and the Lessee surrender part to the Lessor the Rent shall be apportioned. So if the Lessor recouereth part of the land in an action of waste, or entreth for a forfeiture in part the Rent shall be apportioned.

* Brooke tit.apportionment 28. 18.E.3.49. 22. ff.52. 3.Ass.18. 18 E.2. Auowrie, 218. Vid.lib.6.fo.1.2.in Bruerons case. Vid lib.8 fo.105.106. in Talbots case.

(g) So likewise if the Lessor granteth part of the reuersion to a stranger the Rent shall be apportioned for the Rent is incident to the reuersion. (h) So it is if Tenant by Knights seruice by his last Will and testament in writing deuiseth the reuersion of two parts of the lands the Deuisee shall haue two parts of the Rent.

(g) 14.H.8.12. Vid lib.8 fo 79. in Wildes case. Pasch.39.Eliz. Rot.233. So it was adiudged inter Colins & Harding.

(h) Trin.43 Eliz. Rot.243. inter West & Lassels & Hall. 42.Eliz. Rot.108. in Communi banco inter Eyre & Meyn.

And these cases are in mine opinion rightly adiudged against a sudden opinion in Hill.6 & 7.E.6 reported by Serieant Benloe to the contrary. Note what inconuenience should follow if by the seuerance of the reuersion the Rent should be extinct.

¶ *Purchase parcell de la terre.* This is intended of a fee simple, for

for if there be a Lord and Tenant of 40 acres of Land by fealty and xx. shillings Rent, (i) if the Tenant maketh a gift in tayle, or a Lease for life or yeares, of parcell thereof to the Lord, in this case the rent shall not be apportioned for any part, but the rent shall be suspended for the whole: for a Rent seruice (saith Littleton) may be extinct for part, and apportioned for the rest, but a Rent seruice cannot be suspended in part by the act of the partie, and in Esse for other part. So it is if the Lessor enter vpon the Lessee for life or yeares into part, and thereof disseise or put out the Lessee, the rent is suspended in the whole, and shall not be apportioned for any part. And where our bookes * speake of an apportionment in case where the Lessor enters vpon the Lessee in part, they are to be vnderstood where the lessor enters lawfully, as vpon a surrender, forfeiture, or such like, where the rent is lawfully extinct in part. And yet by Ie in Law a Rent seruice may be suspended in part, and in esse for part. * As when the Gardein in Chiualrie entreth into the land of his Ward within age, now is the Seigniorie suspended: but if the wife of the Tenant be endowed of a third part of the Tenancie, now shall she pay to the Lord the third part of the rent. * And so it is if the Tenant giue a part of the Tenancie to the father of the Lord in Taile, the father dieth, and this descends to the Lord, in this case by Act in Law the Seigniorie is suspended in part and in esse for part, and the same Law is of a Rent charge.

(i) 32.H.8.tit. Extinguishment Br.48. 11.Ed.3.Cessauit 21. 17.E.3.57.a.

* 21.E.4.29. 9.E.4.1. 7.H.6.26. 4.H.7.6.b. 11.E.3.Cessauit 21.

* 33.E.3.Dower 138.

* 30.Ass.p.12.

* 27.E.3.88.

Likewise a Seigniorie may be suspended in part by the act a stranger: * As if two Joyntenants or Coparceners be of a Seigniorie, and one of them disseise the Tenant of the land, the other Joyntenant or Coparcener shall distreine for his or her moitie.

Concerning the apportionment of Rents, there is a difference betweene a grant of a Rent, and a reseruation of a Rent: for (k) if a man be seised of two acres of land, of one in fee simple, and of another in Taile, and by his Deed grant a rent out of both in fee, in taile, for life, &c. and dieth, the land intailed is discharged, and the land in fee simple remaines charged with the whole rent, for against his owne grant he shall not take aduantage of the weakenesse of his owne estate in part. (l) But if he make a gift in tayle, a lease for life or for yeares of both acres, reseruing a rent, the Donor or Lessor dieth, the Issue in taile auoydeth the gift or lease, the rent shall be apportioned, for seeing the rent is reserued out of and for the whole land, it is reason that when part is euicted by an elder title, that the Donee or Lessee should not be charged with the whole rent, but that it should be apportioned ratably, according to the value of the land, as Littleton here saith.

(k) 12.H.4.17. 17.Ed.2. Dower 164. 30.Ass.p.12.

(l) 20.H.6.3. 9.E.4.1.a. 35.H.8.Dyer 56. 7.E.6. Dyer 82. 9.E.3. 6.H.4.17.

(m) If a man grant a Rent charge out of two acres, and after the Grantee recouereth one of the acres against the Grantor by a title paramount, the whole rent shall issue out of the other acre: but if the recouerie be by a faint title by Couine, then the rent is extinct for the whole, because he claimeth vnder the Grantee.

(m) Dott.& Stud.li.2.c.17

If a man infeoffeth B. of one acre in fee vpon condition, and B. being seised of another acre in fee, granteth a rent out of both acres to the feoffor, who entreth into the one acre for the condition broken, the whole rent shall issue out of the other acre, because his title is paramount the grant. But if a man maketh a lease for life of Blacke acre and White acre, reseruing two shillings rent, vpon condition that if the Lessee doth such an act, &c. that then he shall haue fee in Black acre, the Lessee performes the condition, albeit now by relation he hath the fee simple ab initio, yet shall the rent be apportioned, for that the reuersion of one acre whereunto the rent was incident, is gone from the Lessor, and so note a diuersitie betweene a rent in grosse, and a rent incident to a reuersion, concerning the apportionment therof. And yet in some cases a rent charge shall not be wholly extinct, where the Grantee claimeth from and vnder the Grantor. As if B. maketh a lease of one acre for life to A. and A is seised of another acre in fee, A. granteth a rent charge to B. out of both acres, and doth waste in the acre which he holdeth for life, B recouereth the waste, the whole rent is not extinct, but shall bee apportioned, and yet B. claimeth the one acre vnder A. And so it is if A. had made a feoffement in fee, and B. had entred for the forfeiture, the rent is wholly apportioned, and is not wholly extinct: and the reason hereof is, for that it is a maxime in Law, That no man shall take aduantage of his owne wrong, Nullus commodum capere potest de iniuria sua propria: And therefore seeing the waste and forfeiture were committed by the act and wrong of the Lessee, hee shall not take aduantage thereof to extinguish the whole rent: and the whole rent cannot issue onely out of the other acre, because the Lessor had the one acre vnder the estate of the Lessee, and therefore it shall be apportioned. * If the King giue two acres of land of equall value to another in fee, fee taile, for life or yeares, reseruing a rent of two shillings, and the one acre is euicted by a title paramount, the Rent shall be apportioned.

* Dyer Mich.7.& 8.Eliz. Manuscript. The Earle of Huntingdons case. Vid.F.N.B.234.b. Briefe de Onerando, pro rata porc.

¶ *Mes si vn home tient sa terre, &c. per seruice de render annuelment, &c. vn Chiual ou vn Esperon dor, &c. si en tiel case le Seignior purchase parcel de terre, tiel seruice est ale.*

¶ Chiual.

¶ *Chiual.* Nota, **In Latyne** Deſtrarius **is a great Horſe, or** horſe of ſeruice, of the French word Deſtrier. Palfridus, a horſe to trauell on, of the French word Palfray: And Runcinus, a Nagge, (you ſhall often read of them in Records) it commeth of the Italian word Roncino. But admit that parcell of the land holden by ſuch entire ſeruice come to the Lord by diſcent, whether ſhall the entire ſeruice wholly remaine, or bee extinct? and it is holden that in ſome caſe it ſhall be extinct for the whole, as Suit ſeruice, and ſuch other entire annuall Suit ſeruices. But if the ſeruice be, to render yearely at ſuch a feaſt a horſe, or the like, and the Tenant infeoffe the father of the Lord of part, which diſcends, yet the Feoffor ſhall hold by a horſe, becauſe the ſeruice was multiplied, and each of them, viz. the Feoffor and the Feoffee held by a horſe.

Anno 6.R.1.Rot.5.Warr. Bruertons caſe lib.6.fo.2. 34.Aſſ.15.35.H.6.Exec 21 Plo.Com.72.40.E3.40. 5.E 2 Tit. Auowrie 206.

A. hath common of paſture ſauns nombre, in twentie acres of land, and ten of thoſe acres deſcendto A. the Common ſauns nombre is entire and incertaine, and cannot be apportioned, but ſhall remaine. But if it had beene a Common certaine, (as for ten Beaſts) in that caſe the Common ſhould be apportioned. And ſo it is of Common of Eſtouers, of Turbarie, of Piſcarie, &c. and yet in none of theſe caſes, the diſcent, which is an act in Law, ſhall worke any wrong to the Terre tenant, for he ſhall haue that which belongeth to him, for the act in law ſhall worke no wrong.

F.N.B.209.40.E.3.40

If three Joyntenants hold by an entire yearely rent, as a horſe, or of a graine of wheat, and the Tenant ceaſe by two yeares, and the Lord recouer two parts of the land againſt two of them, and the third ſaues his part by tendring of the rent, &c. and finding ſuretie, albeit the lord come to the two parts by lawfull recouerie, grounded vpon the default and wrong of the two Joyntenants, yet ſhall the entire annuall rent be extinct.

If the Tenant holdeth by Fealtie and a buſhell of wheat, or a pound of Comyn, or of Pepper, or ſuch like, and the Lord purchaſeth part of the land, there ſhall be an apportionment, as well as if the rent were in money: and yet if the rent were by one graine of wheat, or one ſeed of Comyn, or one Pepper corne, by the purchaſe of part, the whole ſhould be extinct. But if an entire ſeruice be pro bono publico, as Knights ſeruice, Caſtle gard, Cornage, &c. for the defence of the Realme, or to repaire a bridge or a way, to keepe a Beacon, or to keepe the Kings Records, or for aduancement of iuſtice and peace, as to aid the Sheriffe, or to be Conſtable of England, though the Lord purchaſe part, the ſeruice remaines. So it is if the tenure be Pro opere deuotionis ſiue pietatis, as to find a Preacher, or to prouide the ornaments of ſuch a Church: or pro opere charitatis, as to marrie a poore Virgin, or to bind a poore Boy Apprentice, or to find a poore man. And ſo note a diuerſitie betweene theſe caſes, and entire ſeruices for the priuate benefit of the Lord.

Vid. Litt. Cap. Tenants in Comm. 71.b. Lib.6.fo.1.2.3. Bruertons caſe Lit.f.49.11.H.7.12.b. 24.H.8. Tenures 53. Brooke 35.H.6.6. 11.El.Dy.285. 16.E.3.Auowrie 93.

Section 223.

¶ Mes ſi vn hõe tient ſa terre dun auter, per Homage, Fealtie, & Eſcuage, & per certaine rent, ſi le Sñr purchaſe parcel de la tẽ, &c. en tiel cas l' rent ſera apportion, come eſt auantdit, mes vncore en ceſt caſe l' homage & fealtie õmurront entier a le Sñr, car le Seignior auera le homage & fealtie de ſon tenant pur le remnant de les

BVt if a man hold his land of another by Homage, fealty, and Eſcuage, and certaine Rent, if the Lord purchaſe part of the land, &c. in this caſe the rent ſhall be apportioned, (as is aforeſayd) but yet in this caſe the Homage and Fealtie abide entire to the Lord: For the Lord ſhall haue the Homage and Fealtie of his Tenant for the reſt of the Lands and Tenements

¶ *Purchaſe parcel del ter', &c.* Here by this &c. is implied, that the reaſons wherfore homage & fealtie remain & are not extinct in this caſe, are, Firſt, becauſe it can be no loſſe to the Tenant, as it might in the caſe of an horſe or other entire ſeruice, for there it may be the remnant is not ſufficient in value to pay it. Secondly, there is no land but it muſt be holden by ſome ſeruice or other, and Homage and Fealtie are the freeſt and leaſt chargeable ſeruices to the Tenant.

Bruertons caſe, vbi ſupra.

5.E.2.Auowrie 206.

¶ *Pur ceo que tiel ſeruices ne ſont paſſe annual ſeruices &c.* This is Ratio vna, but not vnica, as it appeareth by that which hath

hath beene sayd. If there be Lord and Tenant by Fealtie and Herriot seruice, and the Lord purchase part of the land, the Herriot seruice is extinct, (and yet it is not annuall, but to be paid at the death of the Tenant) because it is entire and valuable.

Bruertons Case lib.6. Talbotts Case lib.8.fo.104. 8.H7.11.

¶ *Solonque lafferance & rate de la terre, &c.* Here is by this (&c.) implied, That in some case where it is entire and valuable, and not annuall, it shall not (as hath beene sayd) be extinguished by purchase of part, * as Knights seruice which is to be performed by the bodie of a man, if the Lord purchase part, yet the tenure by Knights seruice remaines for the residue, Quia pro bono publico, & pro defensione regni, but the Escuage shall be apportioned, as here Littleton saith, because that is for the benefit of the Lord, and yet it is casuall, and not annuall. And where our Author speaketh of Seruices, it is implied, that a Herriot custome, though it be entire, valuable, and not annuall, by the purchase of part shall not be extinct. On the other part, when the tenure is by an entire seruice, and the tenant alien part of the tenancie, in what cases the rent shall be multiplied (that is) where the Feoffe and the Alienes shall pay the entire rent severally, (for regularly it holdeth, that quæ in partes diuidi nequeunt, solida à singulis præstantur) and where not, you may read at large in my Reports. *

(a) 7.E.3.29. Talbotts Case lib.8.fo.104.

(*) Bruertons Case lib.6.fo.1.2. Talbotts Case lib.8.fo.104

And by this (&c.) is also implied, that the apportionment shall not be according to the quantitie of the land, but according to the qualitie or value thereof, as by that which hath been sayd appeareth.

terres et tenemẽts tenus de luy, come il auoit adeuant, pur ceo que tiels seruices ne sont passe annuals seruices, et ne poyent estre apportion, mes lescuage poit, & serra apportion solonque lafferance et rate de la terre, &c.

holden of him, as hee had before, because that such seruices are no yearely seruices, and cannot bee apportioned, but the Escuage may and shall bee apportioned according to the quantitie and rate of the land, &c.

Section 224

5.E.3.Auowrie 200. 21.E.3.58 b. 34.Ass.15. Tit. Apportionment.B.28. 9.Ass.22.

¶ NOte heere a diuersitie, when the grantee of a Rent charge commeth to a part of the land charged by his owne act, and when by the course of Law.

30.Ass.Pl.13.

¶ *Purchase parcel de les Tenements charges en fee.* And so it is if the Tenant giueth to the father of the Grantee part of the land in Taile, and this descend to the Grantee, the rent shall bee apportioned, and so by act in Law a Rent charge may bee suspended for one part, and in esse for another.

34.Hen.41.b.

And so it is, if the father be Grantee of a rent, and the son purchase part of the land charged, and the father dieth, after whose death the rent descends to the son, the rent shal be apportioned, and so it is if the Grantee grant the rent to the tenant of the land, and to a stranger, the rent is extinct but for a moitie.

¶ Item, si home ad vn rẽt charg. & son pier purchase parcel de les Tenements charges en fee, & mourust, & cel parcel descend a son fits, q̃ ad l' rẽt charg, ore cel charge ſ̃t apportion solonque le value de la t̃r come ẽ auantdit ď Rent seruice, pur ceo que tiel portion de la terre purchase per la piere, ne vient al fits per sõ fait demesne, mes per discent & p course del Ley.

ALso, if a man hath a Rent charge, and his father purchase parcell of the Tenements charged in fee, and dieth, and this parcel descends to his sonne, who hath the Rent charge, now this charge shall bee apportioned according to the value of the land, as is aforesaid of Rent seruice, because such portion of the land purchased by the Father, commeth not to the sonne by his owne fact, but by discent and by course of law.

If a man hath issue two Daughters and grant a Rent charge out of his land to one of them and dyeth the Rent shall be apportioned, and if the Grantee in this case enfeoffeth another of her part of the land, yet the moity of the Rent remaineth issuing out of her sisters part, because the part of the Grantee in the land by the discent was discharged of the Rent. But in all these cases where the Rent charge is apportioned by act in Law, yet the Writ of Annuity lyeth, for if the Grantee should bring a Writ of Annuity he must ground it upon the grant by Deede, and then must he as it hath beene said bring it for the whole. 9. Ass. 22. 5. R.2. Annuity 21.

Annua nec debitum Iudex non seperat ipsum.

Also in respect of the realty the Rent is apportioned, but the personalty is indiuisible, and by act in Law shall not be deuided. If Execution be sued of body and lands upon a statute Merchant or staple, and after the inheritance of part of those lands discend to the Conusee all the Execution is auoyded, for the dutie is personall and cannot be deuided by act in Law. Pl. Com. 72. 35. H.6. tit. Execut. 21. 15. E.4.5.

¶ *Ne vient al fitz person fait demesne mes per discent & per course del ley.* **If the father within age purchase part of the land charged, and alieneth within age and dyeth, the sonne recouereth in a Writ of** Dum fuit infra ætatem, **or entreth: In this case the act of Law is mixt with the act of the partie, and yet the Rent shall be apportioned, for after the recouery or entry the sonne hath the land by discent.**

So it is in case the sonne recouereth part of the land upon an alienation by his father, Dum non fuit compos mentis, the Rent shal be apportioned for the cause aforesaid.

A man seised of lands in fee taketh wife, and maketh a Feoffment in fee, the Feoffee grants a Rent charge of x pound out of the land to the Feoffor and his wife, and to the heires of the husband, the husband dieth, the wife recouereth the moity for her Dower by the custome, the Rent charge shalbe apportioned, and she may distreyne for fiue pound which is the moity of the Rent. In which case two notable things are to be obserued. First, albeit the Dower bee by relation or fiction of Law aboue the Rent, yet when the wife recouereth her Dower, she shall not haue her entire Rent out of the residue, for a relation or fiction of Law shall neuer worke a wrong or charge to a third person, but In fictione iuris semper est Equitas. Secondly, that albeit her owne act doe concurre with the act in Law, yet the Rent shalbe apportioned. 5. E.2. Auowry, 206. Lib.3.fo.29. in Butler et Bakers case.

Section 225.

¶ Item, si soit ten̄t tenant, & le tenāt tient de s̄ Seignior per fealtie & certaine rent, & le S̄r grant le rent p̄ s̄ fait a vn auter, &c. reseruant a luy le fealty, & le tenant atturna al grantee de l' rent, ore tiel rent est rent seck a le grantee, pur ceo que les tenements ne sont tenus del grantee de le rent, mes sont tenus del Seignior q̄ reserue a luy fealtie.

ALso if there bee Lord and tenant, and the tenant holds of his Lord by fealtie and certaine rent, and the Lord grants the rent by his deed to another reseruing the fealty to himselfe, and the tenant atturnes to the grantee of the rent, now this rent is rent secke to the grantee, because the tenements are not holden of the grantor of the rent, but are holden of the Lord who reserued to him the fealtie.

¶ *Et le Seignior grāta le rent, &c.* **So it is if the Lord release the Rent to the Tenant sauing the fealty, the Rent is extinct. But if there be Lord and Tenant by Fealty and Rent, and the Lord by his Deed reciting the tenure release all his right in the land sauing his said Rent, the Seignior remaines and hee shall haue the Rent as a rent seruice, and the fealtie incident to it, for the said Rent is as much to say as the Rent seruice whereunto fealty is incident.** 12. E.4.11. 9. E.3.1. 40. E.3.22.b. 13. E.3. tit. Aleas, 36.

And so it is if the Lord hath issue two daughters and diet, and upon partition the fealty is allotted to the one and the Rent to the other, she shall haue the Rent as a Rent secke. 17. E.3.72.b.

If there bee Lord of a Mannor and Tenant by fealtie Suit of Court and Rent, the Lord grant the fealty sauing to him the suite of Court and Rent, the sauing is good for the Rent but not for the suite to Court, because the Gran- 17. E.3.72.b.

tæ can keepe no Court, and theue is no tenure of the Grantoz, and therefoze the ſuite of Court is loſt and periſhed in that caſe.

If the Donæ hold of the Donoz by fealty and certaine Rent, and the Donoz grant the ſeruices to another, and the Tenant atturne, ſome haue ſaid the rent ſhall not paſſe becauſe the rent cannot paſſe but as a Rent ſeruice being granted by the name of ſeruices, and the fealty cannot paſſe becauſe as hath beene ſaid the fealty is incident inſeparable to the reuerſion. But it ſæmeth that the rent ſhall paſſe as a Rent ſecke becauſe at the time of the grant it was a Rent ſeruice in the Grantoz, and therefoze there be wozds ſufficient to paſſe it to the Grantee, and it is not of neceſſity that it ſhalbe a Rent ſeruice in the hands of the Grantee.

7.E.32.b.Fitz Warren ceaſe

If there be Lozd and Tenant by fealty and certaine rent, and the Lozd by Dæd grant the rent in fee ſauing the fealty, and grant further by the ſame Dæde that the Grantee may diſtreine foz the ſame rent in the tenancie, albeit a Diſtreſſe were incident to the rent in the hands of the Grantee, and although the Tenant attozne to the grant, yet cannot the Grantee diſtreyne, foz the Diſtreſſe remaines as an incident inſeparable to the Seigniozy, foz then the Tenant ſhould be ſubiect to two ſeuerall diſtreſſes of two ſeuerall men. And ſo it is if the Lozd in that caſe grant the Rent in tayle oz foz life, ſauing the fealty, and further grant that the Grantee may diſtreine foz it, albeit the reuerſion of the rent be a Rent ſeruice, yet the Donee oz Grantee ſhall haue it but as a Rent ſecke, and ſhall not diſtreyne foz it.

7.E.3.2.3.Adiudged.

31.Aſſ.31. 17.Aſſ.10. 22 Aſſ.pl.10. F.N.B.178.D. 22.H.6.3.b. 4.E.2.Aſſ 449 28.H.8.Dier 31.

It is to be obſerued that where a Rent ſeruice is become a Rent ſecke by ſeuerance of the ſame from the Seigniozy, that now the nature of the rent is changed, foz if the Grantee purchaſe part of the land the whole rent ſhall be extinct. And whereas in an Aſſiſe foz a Rent ſeruice all the Tenants of the land need not to be named, but ſuch as did the diſſeiſin: yet in Aſſiſe foz the Rent ſecke which ſometimes was a Rent ſeruice, all the Tenants muſt be named, as in caſe of a Rent charge, albeit he were diſſeiſed but by one ſole Tenant, * but if the Lozd of a Mannoz releaſe the fealty to his Tenant ſauing the rent, oz that a Meſnalty become a rent by ſurpluſage, thoſe that are now Secke (and ſometime were ſeruice) are part of the Mannoz, but a Rent charge cannot be part of a Mannoz.

(*) 31.Aſſ.23. 22.Aſſ.53.

¶ *Attorne, &c.* Of Attoznement ſhall be hereafter ſaid in his proper chapter and place.

Sect. 226.

¶ *Si le Seignior voet granter per ſon fait le homage, &c.* It is to be obſerued that where the Seigniozy is by homage, fealty and rent, (a) if the Lozd grant away the Homage, the Fealty ſhall paſſe, foz fealty is an incident inſeparable to Homage (b) & cannot by any ſauing in any grãt be ſeperated frõ it, foz homage cannot be ſole oz alone, but the rent (though it be not ſaued) ſhall not paſſe in that caſe becauſe the rent is not incident to homage. And ſo it is if there be Lozd and Tenant by fealty and rent, & the Lozd grant ouer the fealty without any ſauings, the rent paſſeth not, but fealty hath an incident inſeperable belonging to it, which by no ſauing can bee ſeparated, and that is a Diſtreſſe, foz as Littleton ſaith here, a ſeruice cannot be ſecke (that is) without ſome

(a) 40.E.3.22 per Curiam.

(b) 44.E.3.19.20. 39.H.6.25.29.Aſſ.pl.20. 26.Aſſ.p.38.

¶ Item meſm̃ le manner eſt lou home tient ſa terre per homage, fealtie, & certaine rent, ſi le Sñr grant la rent, ſauant a luy le homage, tiel rent apres tiel grant eſt rent ſecke. Mes la ou terres ſont tenus per homage, fealty, & certein rent, ſi le Sñr voit granter per ſ̃ fait le homage de ſon tenãt a vn auter, ſauant a luy le remnant de les ſeruices, & le tenant atturna a luy, ſolonq; le forme del graunt, en ceſt caſe le tenant tiendra

IN the ſame manner, where a man holds his land by homage, fealty and certaine rent, if the Lord grant the rent, ſauing to him the homage, ſuch rent after ſuch grant is rent ſecke. But there where lands are holden by homage, fealty, and certaine rent, if the Lord will grant by his deed the homage of his tenant to another, ſauing to him the remnant of his ſeruices and the tenant atturne to him according to the forme of the grant, in this caſe

tiendra ſa terre del grantee, & le Sñr q̃ grantaſt le homage, nauera forſq̃ le rent come rent ſeck, & ne vnques diſtreynera pur le rent, pur ceo que homage, ne fealtie, ne eſcuage, ne poit eſtre dit ſeck, car nul tiel ſeruice poit eſtre dit ſeck. Car celuy que ad ou doit auer homage, ou fealtie, ou eſcuage de ſa terre poit per common droit diſtreiner pur ceo ſil ſoit adetere, car homage, fealtie, & eſcuage ſont ſeruices, per queux terres ou tenements ſont tenus, &c. & ſont tiels q̃ en nul maner poiẽt eſtr̃ priſes forſq̃ come ſeruices, &c.

the tenant ſhall hold his land of the grantee, and the Lord who granted the Homage ſhal haue but the rẽt as a Rent ſeck, & ſhall neuer diſtrain for the rẽt, becauſe that homage nor fealty nor eſcuage cannot bee ſaid ſecke for no ſuch ſeruice may be ſaid ſecke. For he which hath or ought to haue homage, fealty, or eſcuage of his land may by common right diſtreine for it, if it bee behind. For Homage, Fealtie, and Eſcuage are Seruices by which Lands or Tenements are holden, &c. and are ſuch ſeruices as in no manner can bee taken but as Seruices, &c.

diſtreſſe belonging to it, for then it were not a ſeruice and ſo of Homage and Eſcuage.

¶ *Terres en tenements ſont tenus, &c.* By this (&c.) and out of this Section it may bee collected that if (c) there bee Lord and Tenant by Fealtie and Rent, the Annuall Rent which is a profitable Seruice is of higher and more reſpect in law then the Fealtie, and therefore by the grant of the Rent the Fealtie ſhall paſſe as an incident thereunto, but it is an incident ſeparable, and therefore may bee by a ſauing, as Littleton hath ſaid, be ſeparated from it. And ſo when the tenure is by Fealtie and Rent, and the Rent be recouered, the Fealtie ſhal includedly bee recouered. (d) And where the tenure is by Homage, Fealtie and Rent, by the recouerie of the Rent with the appurtenances vpon a former right, the Homage and Fealtie alſo ſhall bee reſtored by neceſſitie and indulgence of the Law, for ſeeing the law giueth no Præcipe for the Homage and Fealtie, but for the Rent only, reaſon would that by the recouerie of the Rent, the whole entire Seigniorie ſhall be incluſiuely reſtored in that caſe. But if the recouerie be without title there the Rent is recouered as a Rent ſecke, for that worketh no more then a grant, (*) but by the recouerie of a Mannor whether it be by title or without Title, Homage, Fealtie and all other Seruices parcell of the Mannor are recouered. And albeit Fealtie cannot bee deuided from Homage by grant (as hath beene ſaid) yet by extinguiſhment it may: (e) As if there be Lord and Tenant by Homage, Fealtie, and Rent, and the Lord releaſe the Seigniorie and Seruices, or all his right in the Land ſauing the Fealtie and Rent, or ſauing the ſaid Rent, or if hee by expreſſe words releaſe the Homage ſauing the Fealtie and Rent, there the Fealtie and Rent remayne, for the Homage is extinct. And ſo note a diuerſitie betweene a Grant and a Releaſe in that Caſe. But ſo long as Homage continues the Fealtie cannot be deuided from it.

(c) 44.E.3.19. 26.Aſſ.38. 29.Aſſ.p.20. 9.E.3.2. 39.H.6.24.25. 27.H.8.20. 8.E.4.28.

(d) *Temps H.8. Br. tit. incidents.* 24. 44.E.3.19. 29.Aſſ.30. 39.H.6.24.25.

(*) *Vide Sect.* 149.

(e) 9.E.3.1.

¶ *Forſque come ſeruices, &c.* Here is implied a diuerſitie betweene theſe corporall ſeruices of Homage, Fealtie and Eſcuage, which cannot become ſecke or dry, but make a tenure whereunto Diſtreſſes, Eſcheats, and other profits be incident, And other corporall ſeruices, as to plough, repaire, attend and the like, and all Rents whatſoeuer, for they may become ſecke or dry and make no tenure.

Sect. 227.

¶ Mes auterment eſt de rent que fuit vn foits rent ſeruice, pur ceo que quant

BVt otherwiſe it is of a Rent which was once Rent Seruice, becauſe when it is ſeuered

¶ E*T le Seignior ne poet grant tiel rent oue diſtres, come eſt dit.* (f) For the

(f) 7.E.3.2.3.

the diſtreſſe is an incident inſeparable to the fealtie as hath beene ſaid (g) and therefore a releaſe of diſtreſſe is void.

(g) 7.E.4.11.

8.H.7.4.5.

¶ *Incident.* Incidens a thing appertayning to or following another as a more worthie or principall, whereof you ſee here, and in diuers other places of Littletons examples. And of incidents ſome be ſeparable, and ſome inſeparable, as hath beene ſaid.

il eſt ſeuer per le grant le Seignior de les auters ſeruices, il ne poit eſtre dit rent Seruice, pur ceo que il ne ad a ceo fealtie, que eſt incident a chescun manner de rent ſeruice, & pur ceo eſt dit rent ſecke, ſi le ſeignior ne poit grant tiel rent oue diſtreſſe, come eſt dit.

by the grant of the Lord from the other ſeruices, it cannot bee ſaid Rent Seruice, for that it hath not fealtie vnto it, which is incident to euery manner of Rent-Seruice, and therefore it is called Rent ſeck. And the Lord cannot grant ſuch a Rent with a diſtreſſe, as it is ſaid.

Sect. 228.

¶ *Auant a luy le reuerſion, &c.* By this word (&c.) is to be obſerued (h) that this Rent reſerued is a Rent Seruice, and hath fealtie incident to it, and both Rent and fealtie are incident to the reuerſion, viz. (i) the Rent incident to the Reuerſion ſeparably, but the fealtie incident to the Reuerſion inſeparably, but by the grant of the Rent, the fealtie in this caſe ſhall not paſſe becauſe the fealtie is inſeparably incident to the Reuerſion, but the Grantee ſhall haue the rent as a rent ſecke. Alſo by this (&c) is implyed an attornement of the tenant, for without that, although by the grant the Rent is turned to a Rent ſecke, ſo as the tenant cannot bee charged with any diſtreſſe, yet to the paſſing thereof, there muſt bee an attornment.

(h) 41.E.3.16.

(i) 12.E.4.3.32.H.8.tit. Patents Br. 26. Aſſ. 66. 48 E.3.9.b. Doct. & Stud. lib. 2. cap. 9.

¶ *Attorne, &c.* Here is implyed by this (&c) an attornment in the life of the Grantee, and other incidents to an attornment whereof you ſhall reade at large in the Chapter of Attornment.

¶ Item ſi hõe leſſa a vn auter terres pur terme de vie, reſeruant a luy certain rent ſil grant le rent a vn auter p ſon fait, ſauant a luy le reuerſion de la terre iſſint leſſe, &c. tiel rent neſt forſque rent ſeck, pur ceo que l' granteenad riens en le reuerſion del terre, &c. Mes ſil grant le reuerſion del terre a vn auter pur terme de vie, & le tenant atturne, &c. donques ad le grantee le rent come rent ſeruice, pur ceo q̃ il ad le reuerſion pur terme de vie.

ALſo if a man let to another lands for tearme of life reſeruing to him certaine rent, if hee grant the rent to another by his Deed ſauing to him the Reuerſion of the land ſo letten, &c. ſuch Rent is but a Rent ſeck becauſe that the grantee had nothing in the Reuerſion of the land, &c. but if he grant the Reuerſion of the land to another for tearme of life, and the tenant attorne, &c. then hath the grantee the Rent as a Rent ſeruice, for that he hath the reuerſion for tearme of life.

¶ *Donques ad le grantee le rent come rent ſeruice pur ceo que il ad le reuerſion pur terme de vie.* And the reaſon hereof is becauſe the Rent is incident to the Reuerſion as hath beene ſaid, and (as Littleton ſaith here) palleth away by the grant of the Reuerſion, as with the Superior without ſaying, Cum pertinentijs, &c. for the Reuerſion cannot be ſeck: But by the grant of the Rent the Reuerſion doth not paſſe.

Sect.

Sect. 229.

¶ Et iſſint eſt a entendue q̄ ſi home dona terrez ou tenements en le taile, rendant a luy & a ſes heires certaine Rent, ou leſſa terre pur terme de vie, rendant certaine rent, ſil granta le reuerſion a vn auter &c. & le tenant atturna, tout le rent & ſeruice paſſe per ceſt parol (reuerſion) pur ceo que tiel rent & ſeruice en tiel cas ſont incidents a le reuerſion, & paſſont per le grant de le reuerſion. Mes coment que il granta le rent a vn auter, le reuerſion ne paſſa my per tiel grant, &c.

AND ſo it is to be intended, that if a man giue Lands or Tenements in taile, yeilding to him and to his Heires a certaine rent, or letteth Land for tearme of life rendring a certaine rent, if hee grant the Reuerſion to another &c. and the Tenant atturne, all the Rent and Seruice paſſe by this word (Reuerſion) becauſe that ſuch Rent and Seruice in ſuch caſe are incident to the Reuerſion, and paſſe by the grant of the Reuerſion. But albeit that hee granteth the rent to another, the Reuerſion doth not paſſe by ſuch grant, &c.

¶ This needs no explication, but is euident by that which hath formerly beene ſaid, ſauing by this (&c.) in the end is implyed the old rule, That the incident ſhall paſſe by the grant of the principall, but not the principall by the grant of the incident, Acceſſorium non ducit, ſed ſequitur ſuum Principale.

Section 230.

¶ Sſint nota le diuerſitie. Et iſſint eſt tenus P. 21. E. 4. Mes il eſt adiudge, Anno 26. Lib. Aſſiſarum, ou les ſeruices del tenāt en taile fueront grants, q̄ c̄ fuit bone grant, nient obſtant que le reuerſion demurt, ¶

SO note the diuerſitie. And ſo it is holden, *P. 21. E. 4.* But it is adiudged 26. of the Book of Aſſiſes, where the ſeruices of tenant in taile were granted, that this was a good grant, notwithſtanding that the Reuerſion remayne. ¶

¶ This is added to Littleton. And therefore as I haue done heretofore, and ſhall doe hereafter in like caſes I paſſe it ouer. And the caſe here cited in 26. Aſſ. p. 56. was contra opinionem multorum, and afterwards that Iudgement was reuerſed by Writ of Error, for that the Seruices remayned with the Reuerſion as incidents inſeparable.

Section 231.

¶ Item ſi ſoit ſeignior, meſne, & tenant, & le tenant tiēt del meſne per ſeruice de 5. ſ. & le meſne tient ouſter per ſeruice

ALſo if there bee Lord, meſne and tenant, and the tenant holdeth of the meſne by the ſeruice of fiue ſhillings, & the meſne

¶ *Si ſoit Seignior, meſne & tenant, &c. ſi le Seignior Paramont purchaſe le Seigniorie en fee, &c.*

(k) Some haue ſaid that in (k) 20. E. 3. auowrie. 136.

2.E.2.tit. Exting.6. 26.H.6. iud. 7.

in this case it were reason, that by the purchase of the Lord paramount, his Seigniorie should bee onely extinct, and that hee should become tenant to the Mesne, and the Mesne to hold ouer as the Lord paramount held. But that cannot be, for that one man cannot be both Lord and Tenant, nor one land immediately holden of diuers lords.

(l) 7.Ass.2.9.E.3.20.

(l) If the Tenant infeoffe the Lord Paramount and his wife and their heires, in this case the Mesnaltie is but suspended, for if the wife suruiue, both Mesnaltie & Seigniorie are reuiued.

It is sayd, that if there bee Lord Mesne and Tenant, each of them by Fealtie and fiue pence, the Lord confirme the state of the Tenant, to hold of him by Fealtie and three pence, that the Mesnalty is extinct.

(m) 4.E.3.19. See for this hereafter in the Chapter of Confirmation, Sect.

(m) And so in the same case, if the Tenant bee an Abbot, and the Lord confirme his estate to hold of him in Frankalmoigne, the Mesnaltie is extinct.

(n) 8.H.6.24.

(n) So it is if the Lord release to the Tenant, for whither the Lord purchase the Tenancie, or the Tenant the Seigniorie, the Mesnaltie is extinct. And albeit the Mesne grant the Mesnaltie for life, and then the Lord release to the Tenant, both the reuersion and the estate for life are drowned.

(o) 4.& 5.P.& M.Dy.154.

(o) So if there be Lord and Tenant, and the tenant make a gift in taile, the remainder to the King, the Seigniorie is extinct.

de xij. d. si le Seignior paramont purchase le tenancie en fee, donques le seruice de le mesnaltie est extinct, pur ceo q̄ quant le Seignior paramont ad le tenancie, il tient de son Seignior procheine paramont a luy, & sil doit tener ceo de luy que fuit mesne, donques il tiendra vn mesme tenancie immediate de diuers Seigniors, per diuers seruices, q̄ serroit inconuenient, & la ley voit plus toft suffer vn mischiefe q̄ vn inconueniencie, & pur ceo le Seigniory del mesnaltie est extinct.

holdeth ouer by the seruice of 12. pence, if the Lord Paramont purchase the tenancie in fee, then the seruice of the mesnaltie is extinct, because that when the Lord Paramont hath the tenancie, he holdeth of his Lord next Paramont to him, & if he should hold this of him which was Mesne, then hee should hold the same tenancie immediately of diuers Lords by diuers Seruices which should be inconuenient, and the Law will sooner suffer a mischiefe then an inconuenience, & therefore the Seigniorie of the Mesnaltie is extinct.

¶ *Que serra inconuenient.* **Here it appeareth, That** Argumentum ab inconuenienti is forcible in Law, as hath beene sayd before, and shall bee often obserued hereafter.

(p) 13.H.4.3.40.Ass.p.27. 12.R.2.Vouch.81.

¶ (p) *Le ley voet pluis toft suffer mischiefe que inconuenience.* Lex citius tolerare vult priuatum damnum, quam publicum malum. Here be two Maxims of the Common Law:

First, That no man can hold one and the same land immediately, of two seuerall Lords.

Secondly, That one man cannot of the same land be both Lord and Tenant. And it is to be obserued, That it is holden for an inconuenience, that any of the Maxims of the law should be broken, though a priuate man suffer losse: for that by infringing of a Maxime, not onely a generall preiudice to many, but in the end a publique incertaintie and confusion to all should follow. And the rule of law is regularly true, Res inter alios acta alteri nocere non debet. Et factum vnius alteri nocere non debet, which are true with this exception, vnlesse an inconuenience should follow, as our Author here teacheth vs.

Sect. 232.

¶ *Lauera le iiij. s. come Rent Secke.*

¶ Mes entant q̄ le tenant tenus

But in as much as the Tenant holds

nuit del meſne p v.s. & le meſn̄ tenuit forſque per xij. d. iſſint que il auoit pluis en aduantage p iiij. s. que il payaſt a ſon Seignior, il auera les dits iiij. s. come Rent Seck annuelment de le Seignior que purchaſe le Tenancie.

of the Meſne by fiue ſhillings, & the Meſne hold but by twelue pence, ſo as hee hath more in aduantage by foure ſhillings, than he payes to his Lord, hee ſhall haue the ſayde foure ſhillings as a rent Secke yearely of the lord which purchaſed the Tenancie.

(q) And yet he ſhall diſtreyne for it, for ſeeing the fealtie is extinct, the Law reſerues the diſtreſſe to the rent, for, as it hath beene ſayd in the like caſe, ſeeing the fealtie is extinct, the diſtreſſe by Act in Law may be preſerued, Quia quando lex aliquid alicui concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt. (r) And therefore if a man maketh a leaſe for life, reſeruing a rent, and bind himſelfe in a ſtatute, and hath the rent extended and deliuered to him, he ſhall diſtreyne for the rent, becauſe he commeth to it by courſe of Law.

(r) 13.H.4 Auowrie 237.

(ſ) But if a Rent ſeruice be made a Rent ſecke by the grant of the Lord, the Grantee ſhall not diſtreyne for it, for that the diſtreſſe remaines with the fealtie. (t) If there be Lord, Meſne and Tenant, and the meſnaltie is a Mannor hauing diuers freeholders, and the Lord purchaſe one of the Tenancies, and there is a rent by ſurpluſage, this rent albeit it be changed into another nature, (as hath beene ſayd) is parcell of the Mannor. But yet by purchaſe of part of the land, the whole rent is extinct, albeit the Law did preſerue it.

(ſ) 28.E.3.93.
(t) 31.Aſſ.23. 22.Aſſ.53. 2.H.6.14.

Sect. 233.

C Item ſi hõe que ad Rent Secke eſt vn foits ſeiſi daſcun parcel de le Rent ſa payes l' Tenant ne boit payer l' rent a derere, ceo eſt ſon remedie, il couient de aler per luy ou per aũs, a les terres ou tenements dont l' rent eſt iſſuant, & la demaund̄ les arerages d̄l rent, & ſi le Tenant denia ceo de payer, ceſt denier eſt vn diſſeiſin d̄ le rent. Auxy ſi l' tenant ne ſoit adonq̄s pr̄iſt a payer, ceo e vn denier que eſt vn diſſeiſin de rent. Auxy ſi l' Tenant ne nul auter home ſoit demurrant, ſur les terres

Alſo if a man which hath a Rent ſecke be once ſeiſed of any parcell of the rent, and after the Tenant will not pay the rent behind, this is his remedie, hee ought to goe by himſelfe or by others, to the lands or Tenements, out of which the rent is iſſuing, and there demand the arrerages of the rent, and if the tenant denie to pay it, this deniall is a diſſeiſin of the rent. Alſo if the tenant be not then readie to pay it, this is a deniall, which is a diſſeiſin of the rent. Alſo if the Tenant nor any other man bee remai-

¶ *Eiſin*, or Seiſon is common as well to the Engliſh, as to the French, & ſignifies in the Common Law, Poſſeſſion, whereof Seiſina a Latyne word is made, and Seiſire a Verbe.

¶ *Daſcun parcel.* (u) A ſeiſon of parcel, is a ſufficient ſeiſon in Law, to haue an Aſſiſe of the whole rent.

(u) 5.E.4.2.

Concerning the generall learning of ſeiſons, you may read Lib. 4. Beuils caſe, fol.8. lib.5.fol.98. lib.6.fol.57.lib.7. fol.24.29. lib.9. fol.43. And many authorities of Law there cited, but ſufficient is ſaid here to explaine Littleton.

T.18.E.1. coram Rege Nott. in Theſaur.

¶ *A les Terres, &c.* (w) For a demand of the tenant out of the land is not ſufficient: but if there bee a houſe and land, a demand on the land is ſufficient, but for a condition broken, it ought to be at the houſe, as hath beene ſaid before.

(w) 49.E.3.14.b 14.E.4.4. Pl.Com.71.

¶ *Arere.* This word Arere, is to bee obſerued, for it is not neceſſary that the

the grantee of the rent should demand it at the very time when it becommeth due, but at any time after it is sufficient, for this is not like a demand of a rent vpon a condition, because that is penall and ouerthroweth the whole state and (x) therefore the time of demand must bee certaine, to the end the Lessee, Donee, or Feoffee may bee there to pay the rent, but a demand of a Rent secke or Rent charge is but only a formal meane to recouer that which is due, (y) and therefore in that case it may bee demanded after it is behinde at any time whether the Tenant be present or no for remedies for rights are euer fauourably extended.

(x) 29. Ass 51. 8 H.6.11. Lib. de Entries 79.b.

(y) Mich. 41. E.3. coram Rege adiudg. accordingly.

¶ *Ceo est vn denier en lev.* For wheresoeuer there is a lawfull demand of a rent, and the same is not paid whether the Tenant be present or absent, yet this is a denyall in Law, albeit there bee no words of denyall It appeareth here that the demand must be made vpon the land, and albeit the Tenant nor any for him be there yet must the Grantee demand it, because without a demand there can be no denier in Deede, or in Law.

ou les tenemẽts pur payer le rent quaunt il demaund les arrerages, ceo est vn dẽnier en ley & vn disseisin en fait, & de tiels disseisins il poit auer Assise de Nouel disseisin, **enuers le tenant, & recouera le seisin del rent, & ses arrerages & ses dammages, & les costages ỏ s̃ bṽ & ỏ s̃ plee, &c. Et si aps tiel recouery & execution ewe le rent soyt autfoits a luy denie, donque il auera vn redisseisin, & recouera ses double damages, &c.**

ning vpon the lands or tenements to pay the rent when hee demandeth the arrerages, this is a deniall in law, and a disseisin in deed, and of such disseisins he may haue an Assise of *Nouel disseisin* against the Tenant, and shal recouer the seisin of the Rent, and his arrerages, & his dammages, & the costs of his writ & of his plea, &c. And if after such recouery & execution had, the rent be again denied vnto him, then hee shall haue a redisseisin, and shall recouer his double dammages &c.

(z) *Vid. Bract. li.4. fo.161. 162.204. Brit ca.42.43. & c f.83.106. 114.115.118. Mir. ca.2.§.1.* * *Flet. li.4.ca.1. Bra. vbi supra*

¶ *Disseisin.* (z) Disseisina, **is a putting out of a man out of seisin** and euer implyeth a wrong. But dispossessing or ejectment is a putting out of possession, and may be by right or by wrong, * Omnis disseisina est transgressio, sed non omnis transgressio est disseisina, & si eo animo forte ingrediatur fundum alienum, non quod sibi vsurpet tenementum, vel iura, non facit disseisinam, sed transgressionem, &c. quærendum est a iudice quo animo hoc fecerit, &c. And of Ancient time a Disseisine was defined thus, Disseisin est vn personel tresspasse de tortious ouster del seisin.

Mirror, cap.2.§15. Bracton lib. 4. cap.4. Britton, cap.44.45. &c. Fleta, lib.4.ca.5. & 2. & 3.

¶ *Assise de nouel disseisin.* Assisa nouæ disseisinæ. Assisa properly commeth of the Latyn word Assidio, which is to associate or set together, So as properly Assise is an association or sitting together. And the writ whereby certaine persons are authorised & called together is called Assisa nouæ disseisinæ; so as Assisa is but Cessio. But because Cessio is but a generall word, therefore in this since assisa is vsed in Law for a particular Cession by force of the writ De assisa noue disseisinæ, and accordingly it was anciently said Assise in vn case nest auter chose que cession des Iustices, and it is called Assisa nouæ disseisinæ, for that the Justices of Eire before whom these Assises were taken in their proper Counties did vse their Circuits from 7. yeares to 7. yeares, and no Disseisin before the Eire if it were not complained of in the Eire could be questioned after the Eire, and therefore a Disseisin committed before the last Eire was called an ancient Disseisin, and a Disseisin after the last Eire was called a new Disseisin or Noua disseisina. Assisa also signifieth a Jury of their sitting together, and also a Cession of Parliament as Littleton hereafter in this chapter sheweth.

Mirror, cap.2.§.15.

¶ *Et recouera le seisin del rent.* Here, and by the (&c.) in the end of this Section is implyed, that our Author intendeth his case, where the rent issueth out of lands in one County, for if a man beseised of two acres of land in two seuerall Counties, and maketh a Lease of both of them reseruing two shillings rent in this case, albeit seuerall Liuerys be made at seuerall times, yet is it but one entire rent in respect of the necessity of the case, and he shall distreyne in one County for the whole, and make one Auowrie for the whole. But he shall haue seuerall Assises in confinio comitatus, and in either County shall make

make his pleynt of the whole rent, but there shall be but one Patent to the Justices. (a) And this Assise in confinio comitatus is giuen by the statute of 7.R.2.cap.10. for no Assise lay in that case at the Common Law, but the party might distreine. (b) But for a common of pasture, of Turbarie, of Pischarie, of Estouers and the like in one Countie, appendant or appurtenant to land in an other Countie, an Assise in confinio comitatus, did lye at the Common Law (c) and soit is of a Nusans done in one County, to lands lying in another Countie, the like Assise did lye at the Common Law.

(a) 10. Ass.pl.4. 18. Ass.p.1.& 18.E.3.33. 22. H.6.9.10.
(b) F.N.B.180.a.
(c) F.N.B.183.k.

(d) And albeit the Counties doe not adioyne, but there be 20. Counties meane betweene them, yet the Assise in confinio comitatus doth lye, and the Justices shall sit betweene the said Counties. (e) And where it is said before of two Counties, the like law it is if the same extend into more Counties.

(d) 5.E.4.2.
(e) F.N.B. 180.a

(f) If a man hold diuers Mannors or lands in diuers seuerall Counties by one tenure and the Lord is defeated of his seruices, he shall haue seuerall writs of Customes and seruices, for euery Countie one writ returnable at one day in the Court of Common pleas, and thereupon count according to his case by the Common Law.

(f) 30.E.1.tit.Droit. F.N.B.151.m.

(g) But if the Tenant in that case doe cease, the Lord shall not haue seuerall writs of Cessauit vt supra, for the writ of Cessauit is giuen by Statute * and the forme and manner of the writ therein prescribed, and thereupon it is holden in our bookes that in that case a Cessauit doth not lye.

(g) 18.Ass.pl.1.
* W.2. cap.21.

¶ (h) *Il auera vn redisseisin & recouera ses double damages, &c.* Hereby this (&c.) is also to be vnderstood, that a writ of Redisseisin is giuen by the statute of Merton * (so called because the Parliament was holden at Merton in Anno 20.H.3.) the Letter whereof is, Item si quis fuerit dissesitus de libero tenemento & coram Iusticiarijs itinerantibus seisinam suam recuperauerit per assisam nouę dissesinæ vel per recognition' eorum qui fecerint dissesisinam, & ipse dissesitus, per vicecomitem seisinam suam habuerit, si iidem dissesitores postea post iter Iusticiariorum vel infra de eodem tenemento iterum eundem conquerentem dissesisuerint, & inde conuicti fuerint, statim capiantur, &c. But the double damages are giuen by the statute of W.2.cap.26.

(h) Bracton.fo.216. Britton, 133.246. Fleta, lib.4.cap.29. Merton.cap.2.§.15. Regist.206.207.
* Merton cap.3.W.2.a.46. Vide Sect.234.
Vid Regist.206.b.

And Littleton in few words hath made a good exposition of this statute for where the statute saith Dissesitus de libero tento Littleton expounds it (i) to extend to a Rent secke or Rent charge, albeit, as hath beene said, they be against common right, yet a man hath a freehold in them, (k) And he that granteth Omnia tenementa sua, a Rent charge or a Rent secke doth passe.

(i) 40.Ass.23 a.
(k) 14.E.4.4. 11.H.6.13

Coram Iusticiarijs itinerantibus, &c. saith the statute. But Littleton speaketh generally and so is the statute to be intended before any other Justices that haue authority to take Assises, and Justices Itinerant are set downe but for an example which is worthy of the obseruation (l) being a penall Law.

(l) Fitz.N.B.189.b.

Recuperauerit per assisam, &c. saith the statute, here assisa is taken for the verdict of the Assise as Littleton hereafter in this chapter expoundeth the same. Vel per recognitionem, &c. or by confession. Then the question is what if the recouery were vpon a demurrer or by pleading of a Record and faller of it, or by any other manner. And seeing Littleton speaketh generally it must be vnderstood of all manner of recoueries in an Assise of nouel disseisin; And so it is confirmed by the statute of W.2.ca.26.

¶ *Recouerie.* Recuperatio commeth of the Verbe Recuperare, i. adrem per iniuriam extortam siue detentam per sententiam Iudicis restitui. And Recuperatio in the Common Law, is all one with Euictio in the Ciuill Law, which is, Alicuius rei in causam alterius abductæ per iudicem acquisitio

¶ *Et execution ewe,* Per vicecomitem seisinam habuerit, saith the Statute, but Littleton speaketh generally, (Et execution ewe) And execution had, so as whither it be by the Sherife or by the partie, so as execution or possession be had, it sufficeth.

¶ *Execution,* Executio, And signifieth in Law, The obtaining of actuall possession of any thing acquired by iudgement of Law, or by a fine executorie leuied, whether it be by the Sherife, or by the entrie of the partie, whereof you shall read more hereafter.

Vide sect.504.

Note, it appeareth here by Littleton, That (m) the recouerie in a former writ must bee in Assise of Nouel Disseisin, wherein these words (Tiel recouerie) are to be obserued. And therefore if in a writ of Right close in antient Demeine, the Demandant maketh his protestation, to sue in the nature of Assise of Nouel Disseisin, and after is redisseised, he shall not haue a writ of Redisseisin, because the first recouerie was not by writ of Assise of Nouel Disseisin. (n) And so it is if the recouerie were in Assise of Fresh force by Writ, according to the custome of some Citie or Burrough, also in antient Demeine there be no Coroners.

(m) 14.E.2.tit.Redisf.9. F.N.B.189.f.
(n) 14.E.3.tit.Redisf.8. Vide the 2. part of the Institutes Stat. de Merton.cap.3.
(o) 9.H.4.5. F.N.B. 189.e. 33.Ass.pl.7.

Si iidem dissesitores, saith the Statute, (o) So as it must be the same Dissetors: but here

Idem is taken for non alij: And therefore if the recouerie in the Assise were against two Disseisors, and one of them redisseise him againe, he shall haue a Redisseisin against him, for here is not alius. But if the recouerie had beene against one, and he and another redisseise the Plaintife, he shall not haue a Redisseisin, for here is alius, and he cannot haue a Redisseisin against the former Disseisor alone, because he is Ioyntenant with another. (p) For Ioyntenancie in a writ of Redisseisin is a good plea, and a stranger shall not be subiect to double imprisonment and double dammages.

(p) 33.E.3.redisein.7.

(q) If a recouerie be had against a woman in an Assise of Nouel Disseisin, and the Plaintife recouereth and hath execution, the woman taketh husband, and both of them redisseise the Plaintife, he shall not haue a Redisseisin, because the husband is alius. (r) And yet if a feme recouer in an Assise, and after take Baron, and they are redisseised, the husband and wife shall haue a Redisseisin, because the husband ioyneth for conformitie, and it is in the right of his wife who was disseised before, so in effect it is idem disseisitus & idem conquerens.

(q) 9.H.4.5.F.N.B.188.E.

(r) F.N.B.188.E. Regist. 9.H.4.5.

If two Coparceners be disseised, and recouer in an Assise, if after they make partition, and after they be seuerally disseised, they shall haue seuerall Redisseisins; and so it is of ioyntenants for they be Idem conquerentes & non alij. Also a Redisseisin doth lie against the disseisor which doth redisseise, and against another to whom he made feoffment after the second disseisin, for otherwise the redisseisor might preuent the Plaintife of his redisseisin. But in an Assise against A. and B. A. is found Disseisor, and B. Tenant, and the Plaintife doth recouer, and after he which was found Tenant disseises the Plaintife, he shall not haue a redisseisin, because he did disseise him but once.

De eodem tenemento, saith the Statute. If the Plaintife be redisseised of parcel of the Tenement formerly recouered, he shall haue a redisseisin.

F. N. B. 188.G.

If the Meine recouereth a Rent when it is a Rent Seruice, and after the rent becommeth a Rent Secke by surplusage, and doth redisseise him of the Rent, he shall haue a redisseisin, in the substance of the Rent remaynes though the qualitie be altered.

(s) If tenant in speciall taile recouereth in Assise, and after becommeth Tenant in taile after possibilitie of issue extinct, and then is redisseised hee shall haue a redisseisin. For albeit the state of Inheritance be altered, yet the same freehold remaineth.

(s) 26.H.6.11. Aide .77.

If a man recouer Land in an Assise of nouel disseisin, whereunto there is a common appendant or appurtenant, and after is redisseised of the common, hee shall haue a redisseisin of the common, for it was tacitely recouered in the Assise.

8.E.3.tit. Redisseisin 6. F.N.B.189.F.

Section 234.

CÆ *Quiuocum*. For the better vnderstanding hereof, Of these there be two kinds, viz. Æquiuocum, Æquiuocans; and Æquiuocum Æquiuocatum.

Æquiuocum Æquiuocans est pluriuocum; Polysemus, a word of diuers seuerall significations.

Æquiuocum æquiuocatum est vniuocum, that is to say, reduced to a certaine signification as here in Littletons example, Assisa est nomen æquiuocum æquiuocans, for sometime it signifieth a Iurie, sometime the writ of Assise, and sometime an Ordinance or Statute.

Now Assise, Iurata is Æquiuocum Equiuocatum, and so is breue de Assisa nouæ disseisinæ, and Assisa panis, &c. euen as Canis est nomen æ-

CEt memorandum que cest nosme Assise, est nomen æquiuocum car aleun foits est prise pur vn Iurie, car le commencement de le Record de Assise de nouel disseisin issint commencera: Assisa venit recognitura, &c. quod idem est quod Iurata venit recognitura, &c. Et la cause est, pur ceo que per le briefe de Assise, il est command a la Vicont, Quod faceret duodecim

And *memorandum*, that this name Assise is *nomen Equiuocum*, for sometimes it is taken for a Iurie, for the beginning of the Record of an Assise of *Nouel disseisin* beginneth thus. *Assisa venit recognitura, &c.* which is the same, as *Iurata venit recognitura*. And the reason is for that by the Writ of Assise it is commanded to the Sheriffe, *Quod faceret duodecim liberos & legales homi-*

duodecim liberos & legales homines de vicineto, &c. videre tenementum illud, & nomina illorum imbreuiare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Iuſticiarijs, &c. parati inde facere recognitionem, &c. **Et pur ceo que per tiel original, vn panel per force de meſme le briefe deuoit eſtre returne, &c. il eſt dit en l'commencement del Record en le Aſſiſe,** Aſſiſa venit recognitura, &c. **Jury en briefe de droit il eſt communement dit, que le tenant luy poit mitter en Dieu & grand Aſſiſe, &c. Jury il y ad vn briefe en le** Regiſter, **que eſt appel briefe** de Magna Aſſiſa eligenda. **Iſſint eſt ceo bien proue que eſt noſme Aſſiſe,** aliquando ponitur pro Iurat'. **Et aſcun foits il eſt priſe pur tout le breife daſſiſe, & ſolonque cel entent il eſt pluis properment, & pluis communement priſe, ſicome** Aſſiſe de Nouel diſſeiſin **eſt priſe pur tout l'breue de** Aſſiſe de Nouel diſſeiſin. **Et en meſme le maner Aſſiſe de** *nes de vicineto, &c. videre tenementum illud, & nomina illorum imbreuiare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Iuſticiarijs, &c. parati inde facere recognitionem, &c.* And becauſe that by ſuch an originall, a pannell by force of the ſame Writ ought to be returned, &c. it is ſaid in the beginning of the Record in the Aſſiſe. *Aſſiſa venit recognitura, &c.* Alſo in a writ of Right it is commonly ſaid that the Tenant may put himſelfe on God and the great Aſſiſe. Alſo there is a Writ in the Regiſter which is called a Writ, *De magna Aſſiſa eligenda:* So as this is well proued that this name Aſſiſe, ſometimes is taken for a Iury, and ſomtimes it is takē for the whole Writ of Aſſiſe, and according to this purpoſe it is moſt properly and moſt cōmonly taken, as an Aſſiſe of *Nouel diſſeiſin* is taken for the whole Writ of Aſſiſe of *Nouel diſſeiſin.* And in the ſame manner an Aſſiſe of Common of Paſture is taken for the whole Writ of Aſſiſe

quiuocum, Canis latrabilis, Canis marinus, Canis Cæleſtis ſunt æquiuoca æquiuocata.

¶ *Aſſiſe de nouel diſſeiſin.* **Note** (a) **there bee foure** Aſſiſes. Viz. **this writ, an Aſſiſe of** Mordanceſter, **of** Darreine præſentment, **and of** Vtrum. (a) *Bracton. lib. 4. fol. 160. Britton. cap. 42 fol. 105. 134. F.N.B. Fleta lib. 4 ca. 5. & c. Mirror. cap. 2. §. 15.*

¶ *Vicount.* Vide Sect. 248. verbo *(Shireue.)*

¶ *Quod faciat* 12. *liberos & legales homines de Viceneto, &c.*

(b) **Albeit the wordes of the writ be** duodecim, **yet by ancient courſe the ſherife muſt returne** 24 **and this is for expedition of Juſtice, for if** 12. **ſhould only be returned, no man ſhould haue a full Jurie appeare, or be ſworn in reſpect of challēges, without a** Tales, **which ſhould bee a great delay of tryals. So as in this caſe vſage & ancient courſe maketh Law. And it ſeemeth to mee, that the Law in this caſe delighteth her ſelfe in the number of** 12. **for there muſt not only be** 12. Iurors **for the triall of matters of fact,** (c) **but** 12. Iudges **of ancient time for triall of matters in Law,** in the Exchequer Chamber. **Alſo for matters of State there were in ancient time twelue** Counſellors of State. **He that wageth his Law muſt haue** eleuen others with him **which thinke he ſayes true. And that** number of 12. **is much reſpected in holy Writ, as** 12. Apoſtles, 12. Stones, 12. Tribes, **&c.** (b) 1.H.7.2. (c) *Vide pl. com. in proemio.* *Ioſhua 4. Geneſ. 49.*

(d) **Hee that is of a Jurie muſt be** liber homo, **that is not only a freeman, and not bound but alſo one that hath ſuch freedome of mind as he ſtands indifferent as hee ſtand vnſworne. Secondly, hee muſt bee** legalis. **And by the Law euery Juror that is returned for the triall of any iſſue or cauſe ought to haue three properties.** (d) 9.E.4.16.

(*) Firſt,

(*) Artic. super Cart. cap.9. Regis.178. 8.E.3.30.

(*) First, hee ought to bee dwelling most neer to the place where the question is moued.

Secondly, He ought tobee most sufficient both for vnderstanding, and competencie of estate.

Thirdly, hee ought to bee least suspitious, that is to bee indifferent as hee stands vnsworne, and then hee is accounted in Law Liber & legalis homo, otherwise he may be challenged and not suffered to be sworne. The most vsuall triall of matters of fact is by 12. such men, for ad questionem facti non respondent Iudices. And matters in Law the Judges ought to decide and discusse, for Ad questionem iuris non respondent Iuratores.

Vide Sect.192.193.

9.H.6.37.

(c) Vide Artic. super Cart. ca.9. Fortescue ca.25.&c.29.

(c) For the institution and right vse of this triall by 12. men, and wherefore other Countries haue them not, and this triall excels others. See Fortescue at large, cap.25.&c. 29. (f) And in ancient time they were 12. Knights. This triall of the fact per duodecim liberos & legales homines is very ancient, for heare what the Law was before the Conquest. (g) In singulis Centurijs comitia sunto, atque liberæ conditionis viri duodeni ætate superiores vnà cum præposito sacra tenentes iuranto, &c. May, the tryall in some cases, Per indictatem linguæ (as we speake) was as ancient (h) Viri duodeni iure consulti, Angliæ sex, Walliæ totidem, Anglis & Wallis ius dicunto, and of ancient time it was called, duodecim virale iudicium.

(f) Glanuil. lib.2. cap.14.15. Bracton. lib.3. fol.116.a.

(g) Lamb. verbo Centuria.

(h) Lamb. fol.91.3.

Now seeing we are iustly occasioned, and the rather for the (&c.) herein, to speake of a challenge to Iurors, to make the studious Reader capable of the vnderstanding of the Bookes of Law concerning this matter, It shall be necessarie to say somewhat of challenges; and first what a Challenge is.

Challenge is a word common aswell to the English as to the French, and sometime signifieth to clayme, and the Latine word is vendicare, sometime in respect of reuenge to challenge into the field, and then it is called in Latine vindicare or prouocare. Sometime in respect of partialitie, or insufficiencie, to challenge in Court persons returned on a Jurie. And seeing there is no proper Latine word to signifie this particular kind of challenge, they haue framed a word anciently written (a) Chalumniare, and Columpniare, and Calumpniare, and now written Calumniare and hath no affinitie with the Verbe Calumnior or Calumnia which is derived of that, for that is of a quite other sence signifying a false accuser, & in that sence (b) Bracton calls Calumniator to be a false accuser: but it is derived of the old word Caloir or Chaloir, which in one signification is to care for, or foresee. And for that to challenge Iurors is the meane to care for or foresee, that an indifferent tryall be had, it is called Calumniare, to challenge, that is to except against them that are returned to be Iurors, & this is his proper signification (c): So some

(a) W.2.cap.32. Vide Stat. de 12.E.2. de esson. calumniand. Fleta lib.1.cap.32. Britton. fol.6.a. 12.a.118.& 134. 12. Ass.10.

(b) Brack. lib.3. fol.137.

(c) Bracton. lib.4. fol.257. Vet.N.B. fol.76.

common de pasture est pris pur tout le briefe dassise de common de pasture, & Assise de mortdancester est prise per tout le bře dassise de Mortdancester & Assise de darraine presentmēt est prise per tout le breue dassise de darraine presentment. Mes il semble que le cause pur q̄ tiel briefes al commencemēt fueront appels Assises fuit pur ceo que p chescun tiel briefe il est commande al visc̄ont, Qd' summoneat xij. le quel est a tant adit̄, que doit summoner vn Jurie. Et ascun foits Assise est prise pur vn ordinance, s. pur mitter certaine choses en certaine rule & disposition, sicome ordinance q̄ est appel Assisa panis & Ceruitiæ.

of Common of Pasture. And Assise of *Mortdancester*, is taken for the whole Writ, of Assise of *Mortdancester* and Assise of *Darreine præsentment*, is taken for the whole Writ of *Darreine præsentment*. But it seemes that the reason why such Writs at the beginning were called Assises, was for that by euery such Writ it is commanded to the Sherife, *Quod summoneat* 12. which is as much to say, that hee ought to sommon a Iurie. And sometime Assise is taken for an Ordinance, to wit, to put certaine things into a certaine rule and disposition, as an Ordinance which is called *Assisa panis & Ceruitiæ.*

(c) sometimes a Summons, Somonitio is said (d) to be Calumniata, and a Count to be challenged, but this is improperly. And forasmuch as mens liues, Fames, lands, and goods are to be tryed by Iurors, it is most necessary that they be Omni exceptione maiores, and therefore I will handle this matter the more largely.

A Challenge to Iurors is two fold, either to the Array, or to the Polls: to the Array of the principall Pannell, and to the Array of the Tales. And herein you shall vnderstand, that the Iurors names are ranked in the Pannell one vnder another, which order or ranking the Iurie is called the Array, and the Verbe, to array the Jurie, and so we say in common speech, Battaile array, for the order of the battaile. And this Array we call Arraiamentum, and to make the Array, Arraiare, derived of the French word Arroier, so as to challenge the Array of the Pannell, is at once to challenge or except against all the persons so arrayed or impanelled, in respect of the partialitie or default of the Sherife, Cozoner, or other Officer that made the returne.

And it is to be knowne, that there is a principall cause of challenge to the Array, and a challenge to the fauour: principall, in respect of partialitie, as first if the Sherife or other Officer be of (a) kindred or affinitie to the Plaintife or Defendant, if the affinitie continue. (b) Secondly, If any one or more of the Jurie bee returned at the denomination of the partie, Plaintife or Defendant, the whole Array shall be quashed. So it is if the Sherife returne any one, that he be more fauourable to the one than to the other, all the array shall be quashed. (c) Thirdly, if the Plaintife or Defendant haue an Action of Batterie against the Sherife, or the Sherife against either partie, this is a good cause of challenge. So if the Plaintife or Defendant haue an Action of Debt against the Sherife, (but otherwise it is if the Sherife haue an Action of Debt against either partie) or if the Sherife haue parcell of the land depending vpon the same title, (d) or if the Sherife or his Baylife which returned the Jurie, be vnder the distresse of either partie, or if the Sherife or his Baylife be either of Councell, Attorney, Officer in Fee or of Robes, or seruant of either partie, Gossip, or Arbitrator in the same matter, and treated thereof. (e) And where a Subiect may challenge the array for vnindifferencie, there the King being a partie, may also challenge for the same cause, as for Kindred, or that he hath part of the land, or the like: and where the array shall be challenged against the King, you shall read in our Bookes.

(f) By default of the Sherife, as when the array of a Pannell is returned by a Bailife of a Franchise, and the Sherife returne it as of himselfe, this shall bee quashed, because the partie should lose his challenges. But if a Sherife returne a Jurie within a Libertie, this is good, and the Lord of the Franchise is driuen to his remedie against him.

If a Peere of the Realme or Lord of Parliament be Demandant or Plaintife, Tenant or Defendant, there must a Knight be returned of his Jurie, be he Lord Spirituall or Temporall, or else the Array may be quashed: but if he be returned, although hee appeare not, yet the Jurie may be taken of the residue. And if others be ioyned with the Lord of Parliament, yet if there be no Knight returned, the Array shall be quashed against all. (h) So in an Attaint there ought to be a Knight returned of the Jurie.

(i) And when the King is partie, as in trauers of an Office, he that trauerseth may challenge the Array, as hereafter in this Section shall appeare: And so it is in case of life, and likewise the King may challenge the Array, and this shall be tried by Triers according to the vsual course. (k) The Array challenged on both sides shall be quashed.

(l) And if two estrangers make a Pannell, and not in fauourable manner for the one partie or the other, and the Sherife returnes the same, the Array was challenged for this cause, and adiudged good.

(m) If the Baylife of a Libertie returne any out of his Franchise, the Array shall bee quashed, as an array returned by one that hath no Franchise shall be quashed.

Challenge to the Array for fauour: (n) He that taketh this, must shew in certaine the name of him that made it, and in whose time, and all in certaintie: this kind of challenge beeing no principall challenge, must be left to the discretion and conscience of the Triers, as if the Plaintife or Defendant be Tenant to the Sherife, this is no principall challenge, for the Lord is in no danger of his Tenant, but e conuerso it is a principall challenge, but in the other hee may challenge for fauour, and leaue it to triall. So affinitie betweene the sonne of the Sherife and the daughter of the partie, or e conuerso, or the like, is no principall challenge, but to the fauor: but if the Sherife marrie the daughter of either partie, or e conuerso, this (as hath been sayd) is a principall challenge, or the like. (o) But where the King is partie, one shall not challenge the Array for fauour, &c. because in respect of his allegeance he ought to fauour the King more. But if the Sherife be a Madelect of the Crowne, or other mentall seruant of the King, there the challenge is good, and likewise the King may challenge the Array for fauour.

Note, vpon that which hath beene sayd it appeareth, That the challenge to the Array is in respect of the cause of vnindifferencie or default in the Sherife or other Officer that made the returne,

(a) 12. Ass. 36. 26. Ass. 31. 3. E. 4. 12. 31. Ass. 7. 27. Ass. 2. 22. E. 4. 2. 12. E. 3. Chall 114. 21. E. 3. 6. 3. H. 7 5. Pl. Com. 73. 15. H. 7. 9. 7. E. 6. Dier 78. 12 H. 6. Chall. 59.

(b) 2. E. 4. 4. E. 3. 1. 15. E. 3. 43. 22. E. 4. 12. 9. E. 4. 45. 8. H. 5. 5. 23. Ass. 22. 41. 13. Coll. 99. 1. Ass. 11. H. 4. 26. 22 E. 4. 1. 38. E. 3. 25. 38. H. 6. 6.

(d) 44. E. 3. 5. & 38. 44. Ass. 23. 22 E. 4. 1. 3 H. 6. 39. 15. H. 7. 4. b. 27. Ass. 28. 7. H. 7. 10. 26. Ass. 56. 22. 20. H. 6. 34. 33. Ass. 12 45. Ass. 1. 2. Ass. 8. 8. Ass. 23. 7. E. 3. 56 21. H. 7. 38. 2. H. 4. 13. 44. E. 3. 43. 20. H. 6. 39. 44. Ass. 18. 2. H. 6. 24. 17. E. 2. Chall. 168. 4. E. 4. 11.

(e) 4. H. 7. 44 E. 3. 38 38. Ass. 19. 22. E. 4. Chall. 63. Stanf. 162. c.

(f) 39. Ass. 2. 17. E. 3. 50. 17. Ass. 11. 30 Ass. 5. 8. Ass. 3.

(g) 13. E. 3. Chall 115. Br. Enquest. 100. Lib. 6. fo. 54. Countesse de Rutlands Case Plo. Com. 117. 27. H. 8. 22. 4. Eliz. Dier 208. 8. Eliz. Di. 246. 14. Eliz. Dier 318. 10. Eliz. Dier 265. 6.

(h) 17. E. 2 Attaint 69.

(i) 32. E. 4. 11. Chall. 63. Stanf. Pl. Cor. 19. Ass. 6. b. 4 H. 7. 8. 41. E. 3. 38

(k) 8. H. 4. 22.

(l) 6. R. 2. Chal. 102 13. E. 3. ibid. 108.

(m) 32. E. 3. Chal 110. 111. 32. Ass. 6. 38. Ass. 13.

(n) 34. H. 6. Chall. 69. 8. H. 4. 22. 27. Ass. 20. 22. E. 3. 12. Vid. 26 Ass. 21. 38. H. 6. 9. 7. H. 6. 25. 19. H. 6. 48. 20. H. 6. 38. 20. E. 4. 2. 22. E. 4. Coal. 62.

(o) 22. E. 4. Chal. 63. 4. H. 7. 8.

returne, and not in respect of the persons returned, where there is no vnindifferencie or default in the Sheriffe, &c. for if the challenge to the Array be found against the partie that takes it, yet he shall haue his particular challenge to the Polls.

In some cases a challenge may be had to the Polls, and in some cases not at all. Challenge to the Polls is a challenge to the particular persons, and these be of foure kinds, that is to say, Peremptorie, Principall, which induce Fauour, and for default of Hundredors.

(p) Peremptorie, this is so called, because he may challenge peremptorily vpon his owne dislike, without shewing of any cause, and this onely is in case of Treason or Felonie, in favorem vitæ, and by the Common Law the prisoner vpon an Enditment or Appeale, might challenge thirtie fiue, which was vnder the number of three Juries, but now by the Statute of 22.H.8. the number is reduced to twentie in petite Treason, Murder and Felonie, and in case of high Treason, and misprision of high Treason it was taken away by the Statute of 33. H.8. but now by the Statute of 1.& 2. Phil.& Mariæ, the Common Law is reuiued, for any Treason, the Prisoner shall haue his Challenge to the number of thirty fiue, and so it hath beene resolued * by the Iustices vpon conference betweene them in the case of Sir Walter Raleigh and George Brookes. But all this is to bee vnderstood when any subiect, that is not a Peere of the Realme is arraigned for Treason or Felonie; But if hee be a Lord of Parliament and a Peere of the Realme, and is to bee tried by his Peers, he shall not challenge any of his Peeres at all, for they are not sworne as other Jurors be, but find the partie guiltie or not guiltie vpon their faith or allegiance to the King, and they are Iudges of the Fact, and euery of them doth seperately giue his iudgement beginning at the lowest. But a subiect vnder the degree of Nobilitie may in case of Treason or Felonie challenge for iust cause as many as he can, as shall be said hereafter. In an Appeale of death against diuers they pleade not guiltie, and one ioynt Venire facias is awarded, if one challenge peremptorily, he shall bee drawne against all. Otherwise it is of seuerall Venire fac.

Note, that at the Common Law before the Statute of 33.E.1. the King might haue challenged peremptorily without shewing cause, but only that they were not good for the King, and without being limited to any number, but this was mischieuous to the subiect, tending to infinite delayes and danger. And therefore it is enacted, (q) Quod de cetero licet pro Domino Rege dicatur quod iuratores, &c. non sunt boni pro Rege: non propter hoc remaneant inquisitiones, &c. sed assignent certam causam calumniæ suæ, &c. whereby the King is now restrained.

Principall, so called because if it be found true, it standeth sufficient of it selfe without leaning any thing to the conscience or discretion of the Triors. Of a principall cause of challenge to the array, we haue said somewhat already, now it followeth with like breuitie to speake of principall Challenges to the Polles, (that is) seuerally to the persons returned.

Principall challenges to the Poll may be reduced to foure heads: First, Propter Honoris respectum, For respect of Honour; Secondly, Propter Defectum, For want or default; Thirdly, Propter Affectum, For Affection or partialitie; Fourthly, Propter Delictum, For Crime or Delict.

First, Propter Honoris respectum, As any Peere of the Realme, or Lord of Parliament, as a Baron, Viscount, Earle, Marquesse, and Duke, for these in respect of Honour and Nobilitie, are not be sworne on Iuries; and if neither partie will challenge him, he may challenge himselfe, for by Magna Charta it is prouided, Quod nec super eum ibimus, nec super eum mittemus nisi per legale iudicium parium suorum, aut per legem terræ. Now the Common Law hath deuided all the subiects into Lords of Parliament, and into the Commons of the Realme. The Peeres of the Realme are diuided into Barons, Viscounts, Earles, Marquesses & Dukes: The Commons are diuided into Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgesses, and in iudgement of Law, any of the sayd degrees of Nobilitie are Peeres to another. As if an Earle, Marquesse, or Duke be to be tried for treason or felonie, a Baron or any other degree of Nobilitie is his Peer. In like manner, a Knight, Esquire, &c. shall be tried per Pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgesses, so as when any of the Commons is to haue a trial either at the Kings suit, or betweene partie and partie, a Peere of the Realme shall not be impanelled in any case.

Secondly, Propter Defectum,

1 Patriæ, (a) as Aliens borne.

2 Libertatis, (b) as Villeines or Bondmen, and so a Champion must be a Freeman.

3 Annui census, i. liberi tenementi. (c) First, what yearely Freehold a Juror ought to haue that palleth vpon triall of the life of a man, or in a plea reall, or in a plea personall, where the debt or dammage in the Declaration amounteth to fortie Markes, Vid. Sect. 464. (*) Secondly, this Freehold must be in his owne right, in Fee simple, fee taile, for terme of his owne life, or in another mans life, although it be vpon condition, or in the right of his wife out of antient Demesne, for freehold within antient demesne will not serue, but if the debt or dammage amount

(p) 1.H.5.Chal.162. 9.H.5.7. 15.E.4.32. 14.H.7.7 19. Dyer. & Stud. lib.2. Fortescue cap.27. 3.H.7.2. 2.R.3.13. 32.H.6.26.17.Ass.6. 37.H.6.8. 22.H.8.ca.14. 33.H.8.tit.Chal.Br.217. 33.H.8 ca.23. 1 & 2.P.& M.ca.10. 32.H.6.26. 14.H.7.14. Stanf.Pl.Cor. 137,138.
* Hil.1.Ia.R.

9.E.4.27.

(q) 33.E.1. Ordinatio de Inquisitionibus. Stanf. Pl. Cor. 162.

Lib.6.fo.52,53. Countesse de Rutlands case. 48.E.3.30. 48.Ass.6.35.H.6.46. 22.Ass.24. F.N.B.165.d.e & 166.Regist.179.

(a) Lib.7.f.18. Calvins case. Li.10.fo.104. 14.H 4.19.b.
(b) Bract.fo.185. Brit.f.135 Flet.l.4.ca.8. 26. Ass.28. 3.H.6.39 9.E.4.16.b. 21.H.6.10. 10 H.7.20.
(c) Vid.Sect.464.38.ass 19. 17.Ass.15. 4.H.6.28. 9.H.5.5. 10.H.6.7.8.18. 3.H.7.1.10.H.7.14. 19.H. 6.9. 7.H.6.25.40.44. 12.E.4.13. 3.H.4.4.
(*) 9.H.6.Chal.37.9.H.7.1

reth not to foyste Markes, any Freehold sufficeth. (d) Thirdly, he must haue freehold in that Countie where the cause of the Action ariseth, and though he hath in another, it sufficeth not. (e) Fourthly, if after his returne he selleth away his land, or if Cesty que vie, or his wife dieth, or an entrie be made for the condition broken, so as his freehold be determined, he may be challenged for insufficiencie of Freehold.

(d) 19.H.6.9. 17.Ass.15.

(e) 12.H.7.4.21.H.6.38. 7.H.4.1.

4 Hundredorum: First, by the Common Law in a plea reall, mixt, and personall, there ought to be foure of the Hundred (where the cause of Action ariseth) returned for their better notice of the cause, for Vicini vicinorum facta præsumuntur scire. But now since Littleton wrote, (f) in a plea personall if two Hundredors appeare, it sufficeth, and in an Attaint, (g) although the Jurie is double, yet the Hundredors are not double. Secondly, (h) If he hath either freehold in the Hundred, though it be to the value but of halfe an acre, or if he dwell there, though he hath no freehold in it, it sufficeth. (i) Thirdly, if the cause of the Action riseth in diuers Hundreds, yet the number shall suffice, as if it had come out of one, and not seuerall hundredors out of each hundred. (k) Fourthly, if there be diuers Hundreds within one Leet or Rape, if hee hath any Freehold, or dwell in any of those Hundreds, though not in the proper Hundred, it sufficeth. (l) Fiftly, if the Jurie come de corpore Comitatus, or de proximo hundredo, where the one partie is Lord of the Hundred, or the like, there need no Hundredors bee returned at all. (m) Sixtly, if a Hundredor after he be returned, sell away his land within that Hundred, yet shall he not be challenged for the Hundred, for that this notice remaines, otherwise as hath been sayd for his insufficiencie of Freehold, for his feare to offend, and to haue lands wasted, &c. which is one of the reasons of Law, is taken away. (n) Seuenthly, he that challengeth for the Hundred, must shew in what hundred it is, and not driue the other partie to shew it. Eightly, his challenge for the hundred is not simpliciter, but secundum quid for though it bee found that he hath nothing in the Hundred, yet shall not he be drawne, but remaine præter H. that is, besides for the Hundred, and albeit he dwelleth or haue land in the Hundred, yet must he haue sufficient Freehold.

(f) 27.Eliz.cap.6.
(g) 7.H.4.47.
(h) 16.E.4.7.4.Mar.Br. Chall.216. 21.E.4.74.75. 9.H.6.66.
(i) 20.H.6.23.4.Mar.Br. Chall.216.
(k) 10.H.6.5. 12.H.4.14. 19.E.4.5.
(l) 37.H.6.11.2. E 1.43
(m) 21.H.6.38. 12.H.7.4.
(n) 7.Eliz.Dier.231.

3 Propter affectum: And this is of two sorts, either working a Principall challenge, or to the fauour. And againe a principall challenge is of two sorts, either by Judgement of Law without any Act of his, or by Judgement of Law vpon his owne Act.

Bract.fol.185. Britt fol.134.135. Fleta lib.4.c p.8. 21.E.4.11.12.

And it is said that a principall challenge is, when there is expresse fauour or expresse malice. First, without any Act of his, as if the Juror bee (a) of bloud or kindred to either partie, Consanguineus which is compounded ex Con. & sanguine, quasi eodem sanguine natus, as it were issued from the same bloud, and this is a principall challenge, for that the Law presumeth that one Kinsman doth fauour another before a stranger, (b) and how farre remote soeuer he is of kindred, yet the Challenge is good. And if the Plaintife challenge a Juror, for kindred to the Defendant, it is no Counterplea to say that hee is of Kindred also to the Plaintife, though hee be in a nearer degree, For the words of the Venire facias forbideth the Juror to be of kindred to either partie.

(a) Britton.fol.135.

(b) Mirror.cap.3.de ordinance dattaint.
Bracton, Britton, Fleta } vbi supra.
14.Eli.Dier.310. 21.E.4.75 40.Ass.20.Pl Com.fol. 41.E.3.Chall.99. 21.E.4.75

(c) If a body Politique or Incorporate, sole or aggregate of many, bring any action that concernes their body Politique or Incorporate, if the Juror be of kindred to any, that is, of that bodie, (although the body Politique or Incorporate) can haue no kindred, yet for that those bodies consist of naturall persons, it is a principall Challenge. (d) A Bastard cannot bee of kindred to any, and therefore it can be no principall Challenge. And here it is to be knowne that Affinitas, Affinitie hath in Law two sences. In his proper sence it is taken for that Nearenesse that is gotten by marriage, Cum duæ cognationes inter se diuisæ per nuptias copulantur & altera ad alterius fines accedit & inde dicitur Affinis. In a larger sence Affinitas is taken also for Consanguinitie and Kindred, as in the Writ of Venire facias, and other where. (e) Affinitie or Alliance by Marriage is a principall Challenge, and equiualent to Consanguinitie when it is betweene either of the parties, as if the Plaintife or Defendant marry the Daughter or Cousin of the Juror, or the Juror marry the Daughter or Cousin of the Plaintife or Defendant, and the same continues or issue be had. But if the Sonne of the Juror hath married the Daughter of the Plaintife, this is no principall Challenge, but to the fauour, because it not betweene the parties, much more may be said hereof, sed summa sequor fastigia rerum.

(c) 7.E.4.4.17 E.4.7. 21.E.4.20. 28.H.6.10. 28.Ass.18. 34.Ass.6.
(d) 41.E.3.Chall.99. 41.E. 3.9. 26.H.6.Chall.163.
(e) Mirror, Bracton, Britton, Fleta } vbi supra.
3.E.4.14. 21.E.3.5.41. 43.E.3.Chall.93. 43.Ass.25 26. 22.E.4.2. 14.H.7.2. 15.H.7.9.

(f) If there be a Challenge for Cosinage, hee that taketh the Challenge must shew how the Juror is Cousin. But yet if the cosinage, that is the effect and substance be found, it sufficeth, for the Law preferreth that which is materiall before that which is formall.

(f) 19.H.8.7. 28.H.8. Dier.37. 1.Maria Dier 91. 2.Eliz. ibid.177.

(g) If the Juror haue part of the Land that dependeth vpon the same Title.

(g) Bracton, Britton, Fleta } vbi supra. Mirror vbi supra.

(h) If a Juror be within the hundred, Leet or any way within the Seigniory immediately or mediately, or any other distresse of either party, this is a principall Challenge. But if either party be within the distresse of the Juror this is no principall Challenge but to the fauour.

(h) 9.H.6.tit.Chall.27. 38.E.3.25. 22.E.4.Chall.61. 4.H.6.25. 3.H.6.39. 36.H.6 Chall.40. 22.E.4.1.27.Ass. 28. 22.E.3.12.

(i) If a witnesse named in the Deed be returned of the Jurie it is a good cause of Challenge of him. (k) So it is if one within age of one and twenty be returned, it is a good cause of Challenge.

(i) 23.Ass.11.
(k) Mirror vbi supra.

2. (l) Vpon his owne Act, as if the Iuror hath giuen a verdict before for the same cause, albeit it be reuersed by writ of Error, or if after verdict, Iudgement were arrested. So if hee hath giuen a former verdict vpon the same Title or matter though betweene other persons. (m) But it is to be obserued, that I may speake once for all, that in this and other like cases, hee that taketh the Challenge must shew the Record if he will haue it take place as a principal Challenge, otherwise he must conclude to the fauour, vnlesse it be a Record of the same Court, and then he must shew the day and tearme.

(n) So likewise one may be challenged, that he was Inditor of the Plaintife or Defendant either of Treason, Felony, Mispriſion, Treſpaſſe, or the like in the same cause.

(o) If the Iuror be Godfather to the Child of the Plaintife or Defendant, or è conuerſo, this is allowed to be a good Challenge in our Bookes.

(p) If a Iuror hath beene an Arbitrator chosen by the Plaintife or Defendant in the same cause, and haue beene informed of, or treated of the matter, this is a principall Challenge. Otherwise if he were neuer informed nor treated thereof, and otherwise if he were indifferently chosen by either of the parties, though he treated thereof. But a (q) Commiſſioner chosen by one of the parties for examination of witneſſes in the same cauſe, is no principal cauſe of Challenge for he is made by the King vnder the great Seale, and not by the party as the Arbitrator is, but he may vpon cauſe be challenged for fauour.

(r) If hee bee of counſaile, Seruant, or of Robes, or Fee, or of either party it is a principal Challenge.

(ſ) If any after he be returned doe eate and drinke at the charge of either party, it is a principall cauſe of Challenge, otherwiſe it is of a Iuror after he be ſworne.

(t) Actions brought either by the Iuror against either of the parties, or by either of the parties against him, which imply malice or diſpleaſure, are cauſes of principall Challenge, vnleſſe they be brought by Couyn either before or after the returne, for if Couin be found, then it is no cauſe of Challenge; other Actions which doe not imply malice or diſpleaſure, are but to the fauour.

(u) In a cauſe where the Parſon of a Pariſh is partie, and the right of the Church commeth in debate, a Pariſhioner is a principall Challenge. Otherwiſe it is in debt, or any other Action where the right of the Church commeth not in queſtion.

(w) If either party labour the Iuror and giue him any thing to giue his verdict, this is a principall Challenge. But if either party labour the Iuror to appeare & to doe his conſcience, this is no Challenge at all, but lawfull for him to doe it.

(x) That the Iuror is a fellow Seruant with either party, is no principall Challenge but to the fauour.

(y) Neyther of the parties can take that Challenge to the Polls, which he might haue had to the Array.

(a) Note if the Defendant may haue a principall cauſe of Challenge to the array, if the Sheriſe returne the Jury, the Plaintife in that caſe may for his one expedition alledge the ſame, and pray Proceſſe to the Coroners, which hee cannot haue, vnleſſe the Defendant will confeſſe it, but if the Defendant will not confeſſe it, then the Plaintife ſhall haue a Venire facias to the Sheriſe, and the Defendant ſhall neuer take any challenge for that cauſe, and ſo in like caſes. But on the part of the Defendant any ſuch matter ſhall not be alledged, and Proceſſe prayed to the Coroners, becauſe he may challenge the Jury for that cauſe, and can haue no preiudice.

(b) Challenge concluding to the fauour, when either partie cannot take any principall Challenge, but ſheweth cauſes of fauour, which muſt bee left to the conſcience and diſcretion of the Triors vpon hearing their euidence to find him fauourable or not fauourable. But yet ſome of them come nearer to a principall Challenge then other. (c) As if the Iures be of kindred, or vnder the diſtreſſe of him in the Reuerſion or remaynder, or in whoſe right the Anoſwere or Juſtification is made, or the like: Theſe be no principall Challenges, becauſe he in Reuerſion, Remaynder, or in whoſe right the Anoſwere or Juſtification is not partie to the Record, otherwiſe it is if they were made parties by Vide, Reſceipt, or Moucher, and yet the cauſe of fauour is apparant; ſo it is of all principall cauſes, if they were party to the Record. Now the cauſes of fauour are infinite, and thereof ſomewhat may bee gathered of that which hath beene ſaid, and the reſt I purpoſely leaue the Reader to the reading of our Bookes concerning that matter. For all which the rule of Law is, that hee muſt ſtand indifferent as he ſtand vnſworne.

(d) The ſubiect may challenge the Polles, where the King is party. And if a man be outlawed of Treaſon or Felony, at the ſuite of the King, and the party for auoyding thereof alledgeth impriſonment or the like, at the time of the Outlawrie, though the iſſue be ioyned vpon a collaterall point, yet ſhall the party haue ſuch Challenges, as if hee had beene arraigned vpon the crime it ſelfe, for this by a meane concerneth his life alſo.

4. Proper

(l) 8.H.5.10. 33.H.6.1. 10.H.6.24. 7.H.4.11. 18.E.4.12. 21.E.4.74. 11.R.2.tit.Challenge 106. 27.Aſſ.13.

(m) 43.E.3.Chall.93. 8.H.5.10.

(n) Mirror.vbi ſupra.Britton. fol.12. 11.Aſſ.36. 8.H.4.2. 7.E.4.4.12.Aſſ.26. 19.Aſſ. 6.40.Aſſ.10. 25.E.3.cap.3.

(o) 40.Aſſ.20.2.H.4.15. 10.H.6.Chall.40. 7.H.6.40. 19.H.6.66. 4 E.4.11. 7.E.4.4.

(p) 20.H.6.39. 9.E.4.46. 35.H.6. 19.H.6.3.H.6.24. 7.H.7.10.

(q) Lib.9.fol.71. Peacocks Caſe.

(r) Mirror, Bracton, Britton } vbi ſupra. 12.Aſſ.36. 26.Aſſ.56.28.Aſſ.16. 31.Aſſ.7. 44.Aſſ.18.

(ſ) 13.H.4.13. 11.R.2. Chall.164.

(t) Bracton, Fleta } vbi ſupra. 44.E.3.5.38. 44.Aſſ.23. 8.E.3.25. 43.E.3.31.22.E.4.1. 38.H.6.6.43.E.3. Chall.93. 11.H.4.26. 11.H.6.15. 32.E.3.Chall.189. 24.E.3.37. 39.Aſſ.2. 20.Aſſ.11.43.Aſſ.46.

(u) 17.Aſſ.15.

(w) 8.E.3.39.20.H.6.39. 33.H.8.Dier.48.

(x) 22.Eliz.Dier.367.

Bracton, Britton, Fleta } vbi ſupra. 49.E.3.1.

(y) 9.E.4.6.21.E.4.31. 22.E.4.3.14.H.6.2.20.E.4 2.3.H.7.5.22.Eliz.Dier. 367.

(b) Mirror cap.3.ordinance Iuſtices. Bract.lib.4.fol 185. Britt.fol.134.135. Fleta lib. 4.cap.8.7.H.6.25.

(c) 9.H.7.3. 10.H.7.20. 3.H.7.2. 10.E.4.12.15.E.4 18.13.Aſſ.23.

(d) 6.R.2.Chall.141. 19.Aſſ.6. 38.Aſſ.22 11.R.2 Chall.165.4.H.5.ibid.153.

Propter delictum. (c) As if the Iuror bee attainted or conuicted of treason, or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witnesse, or in a conspiracie at the suite of the King, or in any suite (either for the King, or for any subiect) be adiudged to the Pillory, tumbrell, or the like, or to be branded, or to be stigmatique, or to haue any other corporall punishment whereby he becommeth infamous (for it is a maxime in law Repellitur à sacramento infamis) these and the like are principall causes of challenge. So it is if a man be outlawed in trespasse, debt or any other action, for he is Exlex, and therefore is not legalis homo. And old bookes haue said that if he be excommunicated, he could not be of a Jury.

(c) Mirror, Bracton, Britton, Fleta } Vbi supra. 11.H.4.41. 12.H.4.10. 33.H.6.21.

(f) See the statutes of W.2. and Artic. supra cartas, what persons the Sherife ought to returne on Iuryes, And see F.N.B. breue de non ponendis in Assisis & iuratis, and the Register in the same writ. And see there what remedy the party hath that is returned against Law.

(f) W.2.ca.38. Artic. supercart ca.9. F.N.B.165. & 166. Regist.

It is necessarie to be knowne the time when the challenge is to be taken. (g) First hee that hath diuers challenges must take them all at once, and the Law so requireth indifferent trialls, as diuers challenges are not accounted double. (h) Secondly, if one be challenged by one party, if after he be tried indifferent, it is time ynough for the other party to challenge him. (i) Thirdly after challenge to the Array, and triall duely returned, if the same party take a challenge to the polles, he must shew cause presently. (k) Fourthly, so if a Iuror be formerly sworne, if he be challenged he must shew cause presently, and that cause must rise since he was sworne. (l) Fiftly, when the King is party, or in an appeale of felony, the defendant that challengeth for cause, must shew his cause presently. Sixtly, If a man in case of treason or felony challenge for cause, and he be tried indifferent, yet hee may challenge him peremptorily. Seuenthly, a challenge for the Hundred must bee taken before so many bee sworne, as will serue for hundredors, or else he looseth the aduantage thereof.

(g) 9.E.4.16 10.H.5.9. 37.H.6.8. 3.H.6.38. Brooke tit. chall.8. 7.H.6.40. 14.H.7.5.6.
(h) 9.E.4.16. 27.H.8.2.
(i) 43.E.3. Chal.93. 20. E.3. ibid.116. 22.E.4. ibid.61 7.H.4.41. 3.El. Dower 201.
(k) 22.E.4.1. 9.H.5.6.
(l) 1.H.5.10. 38.Ass.22.

8 (m) In a writ of Right, the graund Jury must be challenged before the foure knights before they be returned in Court, for after they be returned in Court, there cannot any challenge be taken vnto them,

(m) 7.H.4.20. 15.E.4.1.

9 Nota (n) The Array of the Tales shall not bee challenged by any one party, vntill the Array of the principall be tried; but if the plaintife challenge the Array of the principall, the defendant may challenge the Array of the Tales. After one hath taken a challenge to the polle, he cannot challenge the Array.

(n) 9.E.4.27. 9.H.5.11. 34.Ass.6.13.E.3. Chal.108

Now it is to bee seene how challenges to the Array of the principall Pannell, or of the Tales, or of the polles shall be tried, and who shall bee triors of the same, and to whom processe shall bee awarded.

1 (o) If the plaintife alledge a cause of challenge against the Sherife, the processe shall be directed to the Coroners, if any cause against any of the Coroners, processe shall bee awarded to the rest, if against all of them, then the Court shall appoint certaine Elisors or Elitors (so named ab eligendo) because they are named by the Court, against whose returne no challenge shall be taken to the Array, because they were appointed by the Court, but hee may haue his challenge to the polles. (p) Note if processe be once awarded for the partialitie of the Sherife, though there be a new Sherife, yet processe shall neuer be awarded to him; for the entry is ita quod vicecomes se non intromittat. But otherwise it is, for that he was tenant to either partie or the like.

(o) 18.E.4.8.
(p) 15.H.7.9. 14.H.7.31. 18.E.43.

(q) 2 If the Array be challenged in Court, it shall be tried by two of them that be impannelled to be appointed by the Court; for the triors in that case shall not exceed the number of two, vnlesse it be by consent. But when the Court names two for some speciall cause alledged by either partie, the Court may name others, if the Array be quashed, then processe shall be awarded, vt supra.

(q) 27. Ass. 3. 19.H.6.48. 21.H.6. Chal.38. 33.H.6.21 4.E.4.17.43.E.3. Chal.95. 2.R.2. ibid.101. 34. Ass.6. 27 Ass.28. 43 Ass.26.

(r) If a pannell vpon a Venire facias be returned, and a Tales, and the Array of the principall is challenged, the triors, which trie and quash the Array, shall not trie the Array of the Tales, for now it is as if there had beene no appearance of the principall pannell, but if the triors affirme the Array of the principall, then they shall trie the Array of the Tales. If the plaintife challenge the Array of the principall, and the defendant the Array of the Tales, there the one of the principall, and the other of the Tales shall trie both Arrayes. For other matter concerning the Tales, see (f) in my Reports matters worthy of obseruation. (t) When any challenge is made to the polles, two triors shall bee appointed by the Court, and if they trie one indifferent, and he be sworne, then he and the two triors shall trie another, and if another be tried indifferent, and he be sworne, then the two triers cease, and the two that bee sworne on the Jurie shall trie the rest. (v) If the plaintife challenge ten, and the defendant one, and the twelfth is sworne, because one cannot trie alone, there shall be added to him one challenged by the plaintife and the other by the defendant. When the triall is to be had by two Counties, the manner of the triall is worthy of obseruation, and apparant in our (w) bookes. (x) If the foure knights in the writ of Right be challenged they shall tye themselues, and they shall chose the

(r) 9.E.4.46. 19.H.6.48. 34. Ass.6. 7.E.6. Dier.78. 9.H.5.11.
(f) Lib.10.fo.104.105. Denbawds case.
(t) 19.H.6.9. 22.E.4. Chal.61.62.
(v) 7.H.4.41.
(w) 11.H.4.61.48.E.3.30. 11.H.4.63.
(x) 22.E.3.18.39.E.3.2.

the graund Assise, and trie the chalenges of the parties. (y) If the cause of challenge touch the dishonour or discredit of the Juror, he shall not bee examined vpon his oath, but in other cases he shall be examined vpon his oath, to informe the triors. (z) If an inquest be awarded by default, the defendant hath lost his challenge, but the plaintife may challenge for iust cause, and that shall be examined and tried.

Wheresoener the plaintife is to recouer per visum iuratorum, there ought to bee six of the Jury that haue had the view, or knowen the land in question, so as he be able to put the plaintife in possession if he recouer.

In a Proprietate probanda, and a writ to enquire for waste, the parties haue been receiued to take their challenges. (a) But passing ouer many things touching this matter, I will conclude with the saying of * Bracton, Plures autem aliæ sunt causæ recusandi iuratores de quibus ad præsens non recolo, sed quæ iam enumeratæ sunt, sufficiant exempli causa. And so let vs returne to Littleton.

¶ *De visneto, &c.* It should be Viceneto: Vicenetum is derived of this word Vicinus and signifieth Neighbourhood, or a place neere at hand or a Neighbour place. And the reason wherefore the Jury must be of the neighbourhood, is for that Vicinus facta vicini præsumitur scire, all which is implied in this word (&c.)

¶ *Quod summoneat eos, &c.* Summoneo is compounded of Sub & moneo, & Euphoniæ gratia it is said summoneo, to warne or common, as in this case the Sheriffe must warne or summon the Recognitors of the Assise to appeare before the Justices of Assise, &c. And it is truly said (b) that in this case Legittimam summonitionem recipere, in propria persona vbicunque inuentus fuerit in comitatu in quo fuerit res petita, qui quidem si non inveniatur sufficit, si ad domicilium fiat, dum tamen alicui de familia sua manifeste fuerit relata, &c.

¶ *Per bonos summonitores.* Here two things are to bee obserued. First, that the summoners must be Boni (id est) fide digni vt valeant legittimum testimonium perhibere, cum inde per Iusticiarios fuerint requisiti. (c) And another saith, Feme, ne serfs, ne enfans, ne nul enfamys, ne nul que nest fife tenant, ne poet este bone summoner. 2. It is spoken in the plurall number Per bonos summonitores, and therefore there must bee two at the least. Nec sufficit quod summonitio fiat per vnum tantum, &c. necesse est igitur quod per duos ad minus fiat, &c. There is also a summons of a tenant in a reall action, whereof, and of Pernors and Meiors you shall reade (d) plentifully and plainely in our bookes, whereunto being matter of course I referre you.

Item Summonitionum alia est Generalis, alia Specialis, whereof you shall finde excellent matter in our (e) old bookes, where you shall also reade at large De Sūmonitione, Præsummonitione, & Resummonitione.

¶ *Facere recognitionem.* Cognitio is knowledge, or knowledgement or opinion, and Recognition is a serious acknowledgement or opinion vpon such matters of fact as they shall haue in charge, and thereupon the Jurors are called Recognitores assisæ, Vid. Sect. 233 Recognitio taken for the confession of the Tenant.

¶ *Pannell* is an English word, and signifieth a little part, for a Pane is a part, and a Pannell is a little part (as a Pannel of wainscot, a Pannell of a saddle, and a pannell of Parchment wherein the Jurors names be written and annexed to the writ. And a Jury is said to be impannelled, when the Sheriffe hath entred their names into the pannell, or little peece of Parchment in Pannello assisæ.

¶ *Briefe de droit.* Breue de Recto, writs of right be of two natures 1. a writ of Right, whereof Littleton here speaketh, which is the highest writ of all other in all writs whatsoeuer, and hath the greatest respect, &c. and the most assured and finall iudgement, and therefore this writ is called a writ of Right right, and this in (f) old bookes is called Dreit dreit, and this writ Est darrein remedie de touts recoueries enter touts ordres de pleas, and the Jury in this writ is called Magna assisa or magna Iurata, as Littleton here saith. 2. writs of Right in their nature, as the Rationabile parte, and Ne iniuste vexes.

¶ *De Recto.* Rectū, is a proper and significant word for the right that any hath, and wrong or Iniury, is in French aptly called Tort, because Iniury & wrong is wrested or crooked, being contrary to that which is right and streight. Now the Law this is Linea recta est index sui & obliqui. And Britton * saith that Tort a la ley est contrarye, and as aptly for the cause aforesaid is iniury in English called wrong. And Iniuria is derived of In and jus, because it is contrary to right, so as A faire tort is facere tortum, and Fleta saith (g) Est autem ius publicū & priuatū quod ex naturalibus præceptis aut gentium, aut ciuilibus est collectum, & quod in iure scripto ius appellatur, id in lege Angliæ rectum esse dicitur. And in the (h) Mirror and other places of the law it is called, Droit, as droit defend the Law defendeth.

¶ *En le register.* Register, is a most ancient booke of the common Law

(y) 49.E.3.1.2.

(z) 2.H.4.14.4.E.4.1. 10.E.3.32. 23.Ass.28.31. 21.H.6.56. 16.Ass.1. 5.E.5.35.36.

(a) 8.H.5.tit.Chall.167. 2.H.4.3. 34.E.3.Chall.175. 21.H.6.56. 8.E.4.3. 16.E.4.1.

* Bracton, lib.4.fo.185.

(b) Bracton lib.5.fo.333. 334. Mir.cap.2.§.19. Fleta lib.6.ca.6. Britt.ca.121.

(c) Bracton, Britton, Fleta. } Vbi supra.

Bracton, Britton, Fleta, Mirror } Vbi supra.

(d) Regist.iudicial.1.2.107. 43.E.3.32. 24.E.3.35. 3.E.3.48. 50.E.3.16. 8.H.6.1.b. F.N.B.97.

(e) Mirror, Bracton, Britton, Fleta } Vbi supra.

Register 223.

(f) Bracton Lib.5.fo.372. Britton fol.119. Fleta lib.6. ca.1. Glanvil lib.1.c.4.5.& c lib.2.ca.7. lib.12.cap.1

* Britton, fo.116. Fleta lib.2 ca.1.

(g) Fleta.lib.6.ca.1.

(h) Mirror, ca.2.§ 16. & cap.5.§.2.

Law, and it is twofold, viz. Registrum breuium originalium, and Registrum breuium iudicialium. It is a French word and signifieth a memoriall of writs. Sometimes the Register of originall writs is called Registrum cancellariæ, because all originall writs doe issue out of the Chauncery, as Extra officinam Iustitiæ, for the antiquity and estimation of which booke, I referre the reader to the Epistle before the tenth part of my Commentaries. 13.E.1.ca.24. Pl.Com.228.b.

¶ *Magna Assisa eligenda*, Is a iudiciall Writ to the Sherife to returne foure lawfull Knights before the Iustices there vpon their oathes to returne twelue Knights of the Vicenage to trie the Mise in a writ of Right.

¶ *Assise de common de pasture, &c.* Of what things an Assise of Nouel disseisin lay at the Common Law, and of what by the statute, you may reade at large in my (k) Reports in Iehu Webbes Case, where the Authorities of Law are plentifully cited, and they and the statute well explaned. But since Littleton wrote, a man may haue (l) an Assise of Nouell disseisin, Assise of Mordanc' or any Præcipe quod reddat, Quod ei deforceat, writs of Dower, or other writs originall, as the case shall require of Tythes, Pentions or other Ecclesiasticall or Spirituall profit, if he be disseised, deforced, wronged, or otherwise kept, or put from the same, which by the Lawes and Statutes of the Realme are made temporall, or admitted to be or abide in temporall hands, so as by the said Act a Lay man hauing tythes or offerings may either sue for the subtraction or withholding of the same in the Ecclesiasticall Court, or at the Common law at his election. And seeing no speciall writ is giuen * by the statute, the partie must haue a generall writ of Assise de libero tenemento, and make a speciall plaint. But his Præcipe must be Quod reddat omnes & omnimodas decimas maiores, mixtas, & minutas, infra Dale quoquo modo crescen' contingen' ac annuatim renouan', or the like, according to his case. (m) But neither Assise nor any Præcipe did lye of them as of Tythes or any other Ecclesiasticall dutie at the Common Law for the Assise brought of the Tenth part of all manner of Corne growing in C. acres of land after the Tythes of the Parson taken was a Lay profit Apprender, and no Ecclesiasticall dutie. (k) Lib.8.fo.45. (l) 32.H.8.ca.7. * 7.E.6.Dier.83.&c. (m) 44.E.3.5. Vid.Regist.165. Vid.le briefe de indicauit.W.2.ca.5. Communia feoffatis ca. Vltimo. Bracton, lib.5.fo.402. Britton, fo.260. Regist. fo.35. 4.E.3.27.29. 16 E.3.quare Imp.147. Vid.2.H.3.tit.Grant.89.

But Tythes or other Ecclesiasticall duties, that came to the Crowne by the statutes (n) of 27.H.8. 31.H.8. 37.H.8, and 1.E.6. are by those statutes and this of 32.H.8. and of 1. and 2. Ph. & Mariæ in the hands of Lay men temporall inheritances and shall be accounted Assets; and husbands shall be Tenants by the Curtesie, and wiues endowed of them, and shall haue other incidents belonging to temporall inheritances, only this Ecclesiasticall quality they haue, that the owner or possessor thereof may sue for the subtraction of the same in the Ecclesiasticall Court. (n) 27.H.8.of Monasteries not printed. 31.H.8.ca.13. 37.H.8.ca.4. 1.E.6.ca.14. 1.& 2.Ph.& Mar.ca.8. 2.E.3.ca.13.

But by another (o) statute, remedy is giuen as well to the Lay person, as to the Ecclesiasticall person for subtraction of all manner of prediall Tythes, and he shall recouer the treble value if they be not iustly deuided or set forth, and albeit the treble value be not expressly giuen to the propietarie of the Tythes, yet forasmuch as he is the partie grieued, & he hath the propertie and interest in the tythes, the treble value is giuen to him, & whensoeuer a statute giueth a forfeiture or penalty against him which wrongfully detaineth or dispossesseth another of his duty or interest, in that case he that hath the wrong shall haue the forfeiture or penaltie, & shall haue an action therefore vpon the statute at the Common Law, and the King shall not haue the forfeiture in that case. And so it was (p) adiudged in the Exchequer vpon conference with other Iudges in an information for the treble value for not setting out of tythes in Islington in the County of Cambr. And if the propietarie will sue for such subtraction of tythes in the Ecclesiasticall Court, then he shal recouer but the double value by the expresse words of the Act. Wherein it is to be obserued, that the act of Parliament doth giue a temporall remedy at the Common law to Parsons and Vicars and other Ecclesiasticall persons for an Ecclesiasticall dutie, and to Lay men propietaries of tythes the like remedy, but as it hath beene said, they haue election either to sue for the treble value at the Common Law, or for the double value in the Ecclesiasticall Court, or for subtraction of tythes there also. (o) 2.E.6.ca.13. (p) *Pasch.39.Eliz. betweene the Queene and Wood in the Exchequer, and so it was resolued by all the Iudges vpon conference, Mich.4.Ia.Regis.*

¶ *Assise de Mordancester.* Assisa mortis antecessoris. (q) This writ a man may haue after the decease of his immediate Ancestor, as where his father, mother, brother, sister, vncle or aunt died seised of any lands and an estranger abate, &c. (q) *Britton, fo.178.179.&c. Bracton, lib.4.tract.3. per totum, fo.252.&c. Mirror, ca.2.§.15. F.N.B.114.&c.*

¶ *Assise de darreine presentment.* Assisa vltimæ præsentationis, wherof you shall reade (r) plentifully in our bookes. (r) *Britton, ca.90 fo.222. Bract.lib 4.fo.238. Mirror vbi supra F.N.B.193. Regist.orig.30.*

To these may be added Assisa vtrum or Iuris vtrum (s) which is the highest writ a Parson, Vicar, &c. can haue for the recouering of the Glebe land, &c. in right of his Church. But it may be demanded wherefore these originall writs, are called by the speciall name of Assises more then other originall writs, and here Littleton yeeldeth the reason, because that by these writs, it is commanded to the Sherife Quod summoneat 12 which is as much to say, as to summon a Iury. So as in these cases, there is a Iury returned the first day, and they are to (s) *Bracton, fo.285.286. Britton, ca.95.fo.234. Mirror, vbi supra. F.N.B.48.49.*

appeare as ſoone as the Defendant. And becauſe by theſe Writs a Jury is to be returned the Law calleth them Aſſiſes, Ab effectu, becauſe an Aſſiſe (which in this ſence ſignifieth a Jury) is to be returned. But beſide the ſignification of the Writ * of Aſſiſe whereof Littleton here ſpeaketh, it ſignifieth the whole proceeding vpon the Writ.

In other originall Writs regularly no Jury is to be returned before the appearance of the parties and an iſſue ioyned betweene them, and therefore theſe other originalls are not called Aſſiſes.

* Mag. Chart. ca. 12. And W. 2. ca. 25.

¶ *Pur vn ordinance.* Here Aſſiſa ſignifieth, an Ordinance, &c. Ordinance, Ordinatio is deriued of the verbe Ordinare, To ordaine or ſet in order. And note, an Act (r) of Parliament (as Littleton here proueth) is an Ordinance, for it ſets downe orders which are to be kept as Lawes: and ſo is Ordinatio Foreſtæ, Ordinatio de Inquiſitionibus, and Ordinatio contra Seruientes, and other Statutes many times called Ordinances, and it is ſaid almoſt in euerie Act of Parliament, Be it therefore ordained, &c. by authoritie of this Parliament, or the like. But e conuerſo euerie Ordinance is not a Statute, as that of 8. H. 6. cap. 29. for euerie ſtatute muſt be made by the King, with the aſſents of the Lords and Commons, and if it appeare by the Act, that it was made by two of them onely, it is no ſtatute.

(r) 19. H. 3. Iuris vtrum 16. 39. E. 3. 1. 7. 42. E. 3. 38. 29. E. 3. 7. Regiſt. orig. 189 33. E. 1. 5. R. 2. ca. 2. Vid. li. 8 le Princes caſe.

The example put by Littleton, is Aſſiſa panis & ceruiſiæ, (ſ) This Ordinance was made at a Parliament holden anno 51. H. 3. and the like Ordinance was made, entituled Aſſiſa ceruiſiæ, which you may ſee in old Magna Charta fol. 57. b. (t) And ſo Aſſiſa de Clareden, which was in 10. H. 2. and Aſſiſa Foreſtæ, ordained in anno 34. E. 1. and ſuch like. And aptly an Ordinance of Parliament Antiquitie hath called an Aſſiſe, for that an Act of Parliament doth ordaine ſuch a certaine order, as nothing can be done more or leſſe by right. (u) And Fleta ſaith, Et habet rex in poteſtate ſua, vt leges & conſuetudines & aſſiſas in regno ſuo prouiſas & approbatas & iuratas, &c. Where Aſſiſes are taken for ſtatutes, which are the effects of the Seſſions of Parliament.

(ſ) Mir. ca. 1. §. 13. & ca. 4 de Articles de Eue. Bract. li. 3 fo. 136. (t) Stanf. fo. 118. Mir. ca 2. §. 15. Houeden 313. Regiſt. orig 279. (u) Flet. li. 1. ca. 17.

De ponderibus & menſuris, Of weights and Meaſures is a moſt neceſſarie learning to be knowne, and dayly in vſe, but it belongeth not to this Treatiſe. In ſome other (if God ſo pleaſe) ſomewhat ſhall be ſayd of them.

Section 235.

¶ *Et le tenant attorna.* Here it appeareth that an Attornament (that is an Agreement to the grant) is no ſeiſin of the rent.

¶ *Il ne ad aſcun remedie, &c.* which is as much to ſay, as hee hath not any remedie either at the Common Law, or in any Court of equitie, which is worthie of obſeruation.

See more of this in the Chapter of Attornements Sect. 565.

¶ *Voile doner al grantee vn denier, ou vn maile, &c. en noſme de ſeiſin de rent, &c.* Here it is to be obſerued, that payment of any money in name of ſeiſin of the rent, before any rent become due, is a good ſeiſin of the rent to haue an Aſſiſe when it is due, and that which is giuen in the name of ſeiſin of the rent, worketh his

¶ Item ſi ſoit ſeignior a Tenant, & le Seignior granta le rent ſon tenant per ſon fait a vn auter, ſauant a luy les ſeruices, & l' Tenant atturna, ceo eſt vn Rent Secke, come eſt dit adeuant. Mes ſi l' rent a luy ſoit denie al prochein iour de payment, il ny ad aſcun remedie, pur ceo que il auoit ô ceo aſcun poſſeſſiõ. Mes ſi le Tenant quaunt il atturna al grantee, ou apres, voile doner al grantee vn denier, ou vn maile, &c. en noſme

Alſo if there bee Lord and Tenant, and the Lord granteth the rent of his Tenant by Deed to another, ſauing to him the other ſeruices, and the Tenant atturneth, that is a Rent ſecke, as it is aforeſaid But if the rent be denied him at the next day of payment, hee hath no remedie, becauſe that he had not thereof any poſſeſſion. But if the Tenant when he atturneth to the Grauntee, or afterwards, wil giue a penie or a halfe-penie to the Grauntee in

noſme de ſeiſin de le rent, donques ſi apres a le procheine iour de payment le rent a luy ſoit denie, il auer Aſſiſe de Noel Diſſeiſin. Et iſſint eſt lou hõe grãta per ſon fait vn annual rẽt iſſuant hors de ſa terre a vn auter, &c. ſi le Grantor adonques ou apres paya al Grantee vn denier, ou vn maile en noſme de ſeiſin de le rent, donques ſi apres al procheine iour de payment le rent ſoit denie, le Grantee poet auer aſſiſe, ou auterment nemy, &c.

name of Seiſin of rent, then if after at the next day of payment the Rent bee denied him, hee ſhall haue an Aſſiſe of *Nouel Diſſeiſin*. And ſo it is, if a man graunt by his Deed a yearely Rent iſſuing out of his land, to another, &c. if the Grauntour then after pay to the Grauntee a penie or an halfe-pennie in name of Seiſin of the Rent, then if after the next day of payment the Rent bee denied, the Grauntee may haue an Aſſiſe, or elſe not, &c.

effect to giue ſeaſon, and yet is no part of the rent, nor ſhal be abated out of the rent: but you ſhall read more hereof hereafter, Sect. 565.

¶ *Vn denier, ou vn maile, &c.* Heere by this (&c.) is implied, that ſo it is of the gift of a Sheep, or an Oxe, or a Ring, or a paire of Gloues, or a pound of Pepper, or of any valuable thing.

¶ *Iſſint ſi home grãt per ſon fait vn annual rent iſſuant hors de ſon terre a vn auter, &c.* By this (&c.) is implied, that the grant and deliuerie of the Deed is no ſeiſin of the rent: and that a ſeiſin in law, which the Grantee hath by the grant is not ſufficient to maintaine an Aſſiſe, or any other reall Action, but there muſt be an actuall Seiſin.

Sect. 236.

¶ Item de Rent ſecke, home poet auer Aſſiſe de Mortdanceſter, ou Brieſe de Ayel, ou de Coſtinage, & touts autz manners dactions Reals, come la caſe giſt, ſicome il poet auer dalcun autr rent.

ALſo of Rent ſecke a Man may haue an Aſſiſe of *Mortdaunceſter*, or a Writ of *Ayel* or *Coſinage*, and all other manner of Actions realls, as the caſe lieth, as hee may haue of any other Rent.

¶ *Brieſe de Ayel.* Breue de Auo. This Writ lieth where the Grandfather or Grandmother was ſeiſed of any land in fee the day that he died, and an eſtranger abate, the heyre ſhall haue this Writ. (w) And if the great Grandfather, Beſaiel, Proavus, or great Grandmother Beſaieles Proauia, be ſeiſed, as is aforeſayd, and die, &c. the heire ſhall haue a Writ De Baſaiel, proauo, or beſaiels, proauia, &c.

Bract. li.2. fo.67. Brit. cap.89. & c.76. Flet. li.5. c.7,8. & c. F.N.B.221.

(w) *6.E.3.34. 7.E.3.46. Regiſt.226. F.N.B.221.a.b. Brit.ca.76.*

¶ *Brieſe de Coſinage.* Breue de Conſanguinitate. (a) This Writ lieth where the great Grandfathers father, Tritavus, (id eſt) tertius avus, or abavus, (id eſt) avus aui was ſeiſed as is aforeſayd, or where grandfathers or grandmothers mother, &c. vt ſupra. And ſo it is of the ſeiſin of the brother of the grandfathers grandfather, &c.

(a) *Bract. li.2 fo 67. Brit. ca.89. & ca.76. Flet. l.5. ca.7,8. F.N.B.221.*

¶ *Rent ſecke.* And ſo it is of a Rent charge to all reſpects.

¶ *Et touts auters manners dactions reals.* Hereupon ſome haue gathered that a man ſhall haue a Writ of Right of a rent ſeck, or of a rent charge, albeit they be againſt common right. But that which hath beene ſayd by Littleton of an Aſſiſe of Mortdaunceſter, a Writ of Ayel, Coſinage, and other Actions realls, is to be vnderſtood after Seiſin had by ſome of the Anceſtors of the Demandant, for without an actuall ſeiſin, or a ſeiſin in Deed, none of theſe are maintainable.

15.E.2. Heir de ſon fee 27. 3.E.3 35. 4.E.3. Droit 31. F.N.B 6. 14.E.4,5. Diuerſities des Courts 117. 33.E.3. Iudgem. 352.

Sect.

Section 237

CRescous. Rescuſſus is here deſcribed by Littleton: It is an antient French word comming from Rescourrer, (id eſt) Recuperare, that is, to take from, to reſcue, or recouer. Reſcous is a taking away, and ſetting at libertie againſt law, a diſtreſſe taken, or a perſon arreſted by the Proceſſe or courſe of Law. And all is one, as the point of the Diſſeiſin to reſcue the diſtreſſe after it is taken, and before hand to reſiſt and withſtand the taking of it, but yet it is no Reſcous vntill it bee diſtreyned. And therefore you may make fiue Diſſeiſins of a Rent ſeruice: Reſcous of a diſtreſſe, reſiſtance to diſtreyne, Repleuin, Inclоſure, Counterpleading of the title, and vouching of a Record, and failing. If the Tenant reſcue the diſtres, and after is diſſeiſed of the Tenancie, yet the Aſſiſe lieth againſt him, for the diſſeiſin done of the Rent by the Reſcous.

18.E.3.3. 44.E.3.20.b. 20.H.7.1.a. 21.H.7.40.a. F.N.B.102.b. 6.H.6. Diſſeiſin 9. 4.E.2. Aſſ.43. 8.E.1. ibid.416. W.2.cap.6. 12.H.7.Kelw.20.

CPur ſon rent arere. Here Littleton deciſeth an antient queſtion in our Books, (p) viz. That the rent muſt be behind, or elſe the Tenaunt may make Reſcous: for if no rent be behind when the Diſtreſſe is taken, how can the Reſcous amount to a diſſeiſin of the rent when none is due? And ſo it is, if the Tenaunt reſiſt the Lord to diſtreyne, when there is no rent behind, this can be no diſſeiſin of the rent for the cauſe aboue ſayde, and this (as it appeareth by Littleton) holdeth as well in caſe of a rent ſeruice betweene Lord and Tenant, as in caſe of a Rent charge, &c. And ſo I heard Sir Chriſtopher Wray Chiefe Juſtice ſay, That he had adiudged it: And that which the Tenant may doe when there is no rent behind, may a ſtranger doe, if his beaſts be diſtrained. If the Tenaunt tender the rent to the Lord when he is to take the diſtreſſe, if notwithſtanding the Lord will diſtreyne, the Tenant may make reſcous. If the rent of the Lord be behind, and the Lord diſtreyne the Cattell of the Tenant in the highway within his fee, the Tenant may make Reſcous,

(p) 6.R.2.Reſcous 10. 40. E.3.33. 31.E.3.Reſcous 17. 22.H.6.2.b. 6.E.4.11.b. 7.E.4 20. 5.E.4.8. 34.H. 6.47. F.N.B.102.E. 2.H.4.21.16. 4.E.6.Diſtres Dr.24.39.E.3.35.39.H.6.7 Lib.4.fo.11.Bevills Caſe. 8.H.4.1.

7.E.4.24.

17.E.3.43. Vide tit. Reſcous 14.

CItem, ſont trois cauſes de Diſſeiſin de Rent Seruice, ſ, Reſcous, Repleuin, & Encloſure: Reſcous eſt, quaunt le Seignior en la terre tenus de luy diſtrein p ſ rent arere ſi le diſtres ď luy ſoit reſcous: ou ſi le ſeignior vient ſur la terre, & voile diſtreyner, & le Tenant ou aut home ne luy voile ſuffer, &c. Repleuin eſt, quant le Seignior ad diſtreyne, et Repleuin ſoit fait ď les diſtreſſe per Briefe, ou per Plaint. Encloſur eſt, ſi les Terres ou les Tenements ſont iſſint encloſes, que le Seignior ne poyt vener deins les tres ou tenements pur diſtreyn. Et la cauſe pur que tiels choſes iſſint faits ſont diſſeiſins al Seignior, eſt pur ceo que per tiels choſes le Seignior eſt diſturbe de le meane per que il doit auoire & vener a ſon rent, ſ, de le diſtreſſe.

ALSO there bee three cauſes of Diſſeiſin of Rent Seruice, that is to ſay, Reſcous, Repleuin, and Encloſure: Reſcous is, when the Lord diſtraineth in the land holden of him, for his rent behind, if the diſtreſſe be reſcued from him, or the Lord come vpon the land, and will diſtreyne, and the Tenant or another man wil not ſuffer him, &c. Repleuin is, when the Lord hath diſtrained, and Repleuin is made of the diſtreſſe by writ or by Plaint. Encloſure is, if the lands and tenements bee ſo encloſed, that the lord may not come within the Lands and tenements for to diſtreyne. And the cauſe why ſuch things ſo done be Diſſeiſins made to the Lord, is for this, that by ſuch things the Lord is diſturbed of the meane by which he ought to haue come to his rent, s. of the diſtreſſe.

scous, for that it is defended by Law to distreine in the high way. And by the same reason if the Lord will distreyne aueria carucæ, where there is a sufficient distresse to bee taken besides, or if the Lord distreyne any thing that is not distreynable eyther by the Common Law, or by any Statute, the Tenant may make rescous.

Now, there is a Rescous in Deed and a Rescous in Law: of a Rescous in Deed somewhat hath already beene spoken. A Rescous in Law is when a man hath taken a distresse, and the cattle distreyned as he is driuing of them to the Pownd goe into the House of the Owner, if her that tooke the distresse demaund them of the Owner, and hee deliuer them not, this is a Rescous in Law, and so of the like. 3.E.3 Rescous.12.

And euery word of Littleton is materiall, for he sayth;

¶ *En la terre tenus de luy* And therefore if the Lord distreine out of his fee in Lands not holden of him, the Tenant may make rescous, vnlesse it bee in some speciall Cases.

Is if the Lord come to distreine Cattle which hee seeth then within his fee, and the Tenant or any other to preuent the Lord to distreine, driue the Cattle out of the fee of the Lord into some place out of his fee, yet may the Lord freshly follow, and distreyne the Cattle, and the Tenant cannot make rescous, albeit the place wherein the distresse is taken, is out of his fee, for now in iudgement of Law the distresse is taken within his fee, and so shall the writ of of Rescous suppose. 44.E.3 20.6.R.2.Rescous 11 11 H.7 4.21.H.7.4.34.H.6.18.16.E.4.10.lib.9 fol.22 in case de auowrie.

But if the Lord comming to distreyne had no view of the Cattle within his fee, though the Tenant driue them off purposely, or if the Cattle of themselues after the view goe out of the fee, or if the Tenant after the view remoue them for any other cause, then to preuent the Lord of his distresse, then cannot the Lord distreyne them out of his fee, and if he doth, the Tenant may make rescouse.

If a man come to distreyne for Damage Feasant, and see the beasts in his soyle, and the Owner chase them out of purpose before the distresse taken, the Owner of the soyle cannot distreyne them, and if he doth the Owner of the Cattle may rescue them, for the beasts must be Damage Feasant at the time of the distresse, and so note a diuersitie. 16.E.4.10.2.E.2.auowrie. 182.lib.9.vbi supra.

There is a diuersity (a) betweene a Warrant of Record, and a Warrant, or an Authoritie in Law, for if a Capias be awarded to the Sheriffe to arrest a man for Felony, albeit the party be innocent, yet cannot he make rescous. But if a Sheriffe, will by authority which the Law giueth him, arrest any man for Felony which is not guiltie, he may rescue himselfe. (a) 14.H.7.30.tit. Iustice de Peace.9.

¶ *Replevin*, (b) Is deriued of Replegiare to redeliuer to the Owner vpon pledges or surette. (b) Britton fol.108. Fleta lib.4.cap.1. Mirror cap.2.§.15.

(c) Also to counterplead the Plaintife in an Assise by which hee is delayed, maketh him that pleadeth it a Disseisor. Otherwise it is, if he had pleaded Nul tort, &c. (c) 24.Ass.3.29.Ass.32. Fleta lib.4.cap.1. Britton fol.108.

¶ *Encloser*, Is here also described, and need no other explication, for the Lord cannot (d) breake open the gates, or breake downe the Inclosures to take a distresse, and therefore the Law accounts it a disseisin. But all these are intended by Littleton to be disseisons after an actuall seisen had, and when the Rent is behind, otherwise none of these are disseisons at all. (d) 10.E.3.9 40.E 3 14. 7.E.2.3.11.H.7.28.8.Ass. 18.10.E.4.2.

But wherefore should a Rescous of the distresse by the party himselfe, or a Replevine which is a redelivery of the distresse by the Sheriffe by the course of Law to the partie be any disseisin of the Rent Seruice? Littleton doth here yeild the true reason, because that by the Rescue, and by the suing of the Repleuyn, the Lord is disturbed of the meane by the which he ought to haue and come to his Rent, viz of the distresse. Bracton lib.4.fol.161.204. Britton fol.108. Fleta lib.4.cap.1.

And so it is of an Incloser, for hee that disturbes a man of the meane disseiseth him of the thing it selfe. (e) As the turning of the whole streame that runnes to a Mill is a disseisin of the Mill it selfe. (e) 9.Ass 19.Mirror.ca.2.§.15 Brit.fol.108.114.118.141.

So it is if a man be disturbed to enter and manure his Land, (f) this is a disseisin of the Land it selfe: For Qui adimit medium dirimit finē And qui obstruit aditum destruit cōmodum. (f) 26.Ass 17.3.E 4.3.per Littl. 49.E.3.14 b.

(g) And therefore where it is said that a man shall not bee punished for suing of writs in the Kings Court, be it of right or wrong, it is regularly true, but it fayleth in this speciall case of the writ of Repleuy for the cause aforesaid. (h) But Denier is no disseisin of a Rent Seruice without rescous or resistance. (g) F.N.B 42 g.22.E 3 15 43.Ass.40. 43.E 3.20.sum iudg.10.8.E 3.15.per Moyle. 2.R.3.19. (h) 3.E.3.75. 8.H.6.12.

Sect. 238.

Britton vbi supra. Fleta lib. 4. cap. 1.

¶ *Sont 4. causes de disseisin de Rent Charge.* And you may adde a fifth, viz. Resistance to Distreyne, Counterpleading and Touching a Record and sayler thereof, as hath beene said before.

¶ SET sont 4. causes de disseisin de rent charge, scilicet, Rescous, Repleuin, Enclosure, & Denier, car Denier est vn disseisin de Rent charge, come est auantdit de rent Seck.

AND there bee foure causes of disseisin of a Rent Charge. *viz.* Rescous, Repleuin, Incloser, & Deniall. For Denyall is a disseisin of a Rent Charge, as is said before of a Rent Secke.

14.E.4.4.35.H.6.7.3.Ass.8 10.E.3.9.40.E.3.24.3.H.6. 35.3.E.3.75.29.Ass.51. 39.Ass.4.40.Ass.3.13 E.1. Assise 404.3.Ass.8.8.H.6.11 18.E.3.Assise 78.

¶ *Denier.* Deniall is a disseisin of a Rent Charge, as well as of a Rent secke, albeit he may distreyne for the Rent Charge, as well as for a Rent Seruice. Nota, That when Bookes say that a detayner of a Rent Charge or Secke is a Disseisin, it must be intended vpon a demand made.

If there bee two ioynttenants, and the grantee of a Rent Charge distreyne for the Rent, and one of them make Rescous, they are both disseisors, for a distresse for the rent is a demand in Law, and then the Non-payment is a denyall and a disseisin, but he that make the Rescous is only the Disseisor with force.

Section 239.

49.E.3.15.29.Ass.5. 36.Ass.7.10.E.3.19.33.H. 6.55.35.H.6.7.6.

¶ The reason wherefore Incloſure is a disseisin of a Rent Secke, is because the Grantee cannot come vpon the land to demand it.

¶ ET deux sont causes de disseisin de Rent Seck, cestascauoir, denier & enclosure.

AND there be two causes of disseisin of a Rent Secke, that is to say, denyall and incloſure.

Section 240.

(*) Fleta lib.1.cap.42. 49.E.3.14.49.Ass.5. 39.Ass.49.

¶ *Forstalla.* (*) Forestallamentum, signifieth Obtrusionem viæ vel impedimentum transitus, &c.

¶ *Oue force & armes.* Vi & armis.

(i) Vide Sect.431.

Force, vis in (i) the Common Law is most commonly taken in ill part, and taken for vnlawfull violence, for Maxime paci sunt contraria vis & iniuria. And therefore Britton said well, speaking in the person of the King, Nous volous que touts gents pluis vseant iudgement que force Arma. Armes in the Common Law signifieth any thing that a man striketh or hurteth

¶ ET il semble que il y ad vn auter cause de disseisin de touts les trois seruices auantdits, cestascauoir, si le seignior soit en alant a la terre tenus de luy pur distreyner pur le Rent arere, & le Tenant ceo oyant, luy encounter, & luy forstala la voy ouesque force & armes, ou luy manace en tiel forme que il ne osast bener

AND it seemeth that there is another cause of disseisin of all the three seruices aforesaid, that is, if the Lord is going to the Land holden of him for to distreine for the Rent behind, and the Tenant hearing this, encountreth with him, forestalleth him the way with force and armes, or menaceth him in such forme, that

vener a ſa terre pur diſtreiner, p̃ ſon rent arere pur doubt de mort, ou mutilation de ſes members, ceo eſt vn diſſeiſin, pur ceo que le Seignior eſt diſturbe de le meane, per que il doit vener a ſon rent. Et iſſint eſt ſi p tiel forſtalment ou manace, celuy que ad vn rent charge ou rent ſecke eſt forſtalle, ou ne oſaſt vener a la terre a demaunder le rent arere, &c.

hee dare not come to the land to diſtreine for his rent behinde, for doubt of death, or bodily hurt, this is a diſſeiſin, for that that the Lord is diſturbed of the meane whereby hee ought to come to his rent. And ſo it is if by ſuch foreſtalling or menacing, hee that hath rent charge, or rent ſecke is foreſtalled, or dare not come to the land to aske the rent behinde, &c.

forthall; (k) Omnes illos dicimus armatos qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia in quibus ſinguli homines nocere poſſunt accipiuntur. Sed ſi quis venerit ſine armis & ipſa concertatione ligna ſumpſerit, fuſtes & lapides, talis dicetur vis armata, ſed ſi quis venerit cum armis, armis tamen ad dejiciendum non vſus fuerit, & deiecerit, vis armata dicitur eſſe facta, ſufficit enim terror armorum vt videatur armis deieciſſe. And Armorum quedam ſunt tuitionis (& quod quis ob tutelam corporis ſui vel ſui juris fecerit, juſte feciſſe videtur) quædam pacis & Iuſtitiæ, quædam perturbationis, pacis & iniuriæ, quædam vſurpationis rei alienæ. Againe, Armorum quædam ſunt moluta, & quædam quæ faciunt Bruſuram, &c. Arma moluta plagam faciunt, ſicut gladius, biſacuta & huiuſmodi, ligna verò & lapides Bruſuras orbes, & ictus, &c. To conclude this, it is truly ſaid, that Armorum appellatione non ſolum ſcuta & gladij & galeæ continentur, ſed & fuſtes & lapides, as the Poet ſaith:

(k) *Bracton lib. 4. fol. 162. et lib. 3. fo. 144. Fleta lib. 4. cap. 4.*

Iamque faces & ſaxa volant, furor arma miniſtrat. *Virgill 1. Æneid.*

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ non ad ſumendam vindictam, ſed ad propulſandam iujuriam.

¶ *Pur doubt de mort & mutilation de ſes members.* For it muſt not be Vagus & vanus timor, ſed talis quæ cadere poſſit in virum conſtantem, & non in hominem vanum & meticuloſum, talis enim debet eſſe metus qui in ſe continet mortis periculum & corporis cruciatum. Littleton here ſaith it muſt be for feare of death, * or mutilation of members Et nemo tenetur exponere ſe infortunijs & periculis. And therefore a foreſtallment with ſuch a menace is a diſſeiſin, not only (ſaith Littleton) of a Rent ſeruice, but alſo of a Rent charge and Rent ſecke. Theſe be all the diſſeiſins of a rent that our Author ſpeakes of. See hereafter (l) where a diſſeiſin ſhall be by way of admittance of the owner of the Rent. And Littleton doth adde the binding reaſon in caſe of Foreſtalment, becauſe the Lord is diſturbed of the meane by which he ought to come to his rent, whereof there hath beene ſpoken ſufficient before, aſwell in caſe of the Rent charge and Rent ſecke, as of the Rent ſeruice,

Bracton lib. 2. 16 Britton fo. 19. et 88. Fleta lib. 3. cap. 7.

(*) *See of this in the Chapter of Diſcents 49. E. 3. 14. 49. Aſſ. 5. 29. Aſſ. 47. &c.*

(l) *Vide Sect. 589.*

¶ *&c.* Of the (&c.) in the end of this Section, and what is implied therein, ſufficient hath beene ſpoken before.

Now hath Littleton ſpoken of remedies for the recouery of the arrerages of rents. But ſince Littletons time a right profitable ſtatute * in the 32. yeare of H.8. hath beene made for the recouery of arrerages of rents in certaine caſes where there lay no remedy at the Common Law, and giueth further remedy in ſome caſes where at the Common Law there was ſome remedy, which Statute hath beene well and beneficially expounded, and hereupon eight things are to be obſerued. Firſt, when Littleton wrote, the Heires, Executors or Adminiſtrators of a man ſeiſed of a Rent ſeruice, Rent charge, Rent ſecke, or Fee farme in fee ſimple or fee taile had no remedy for the arrerages incurred in the life of the owner of ſuch rents: But now a double remedy is giuen to the Executors or Adminiſtrators for payment of debts, &c. viz. either to diſtreine, or to haue an action of debt.

(*) 32. H.8. cap. 37.

Lib. 4. fo. 49. 50. a. Oguells Caſe 40. E. 3. Execution 98 45. E. 3. ib d. 71. 9. H. 6. 43. 14. H. 8 20. 19. H. 6. 43. 34. H. 6. 20. 32. E. 3. Det. 9. 9. H. 7. 17. 19. E. 3. Iuriſdiction 22.

2. That the preamble of the ſtatute concerning Executors or Adminiſtrators of Tenant for life is to be intended of Tenant pur auter vie ſo long as ceſtuy que vie liueth who are alſo holpen by the ſaid double remedy: but after the eſtate for life determined, his Executors or Adminiſtrators might haue had an action of debt by the Common Law, but they could not haue

distreyned, which now they may doe by force of this statute, for in that point it addeth (m) an other remedy, then the Common Law gaue.

3. If a man make a Lease for life or liues, or a gift in tayle reseruing a rent, this is a Rent seruice within this statute.

4 The distresse is the more plaine and certaine remedy, then the action of debt, for the action of debt must be brought against them that tooke the profits when the rent became behinde or against their Executors or Administrators; but the distresse may be taken vpon the land, be it either in the Tenants owne hands or in the hands of any other that claymes by or from him, (that is by interpretation vnder him) by purchase, gift or discent, and these words, Clayming only by and from him, are to be vnderstood clayming only from or vnder him by purchase, gift or discent, and not paramount or aboue him, as the Lord by escheate claymeth not vnder the tenant by purchase, gift, or discent, but by reason of his seignory which is a title paramount.

5. If there be Lord and Tenant, and the rent is behinde, and the Lord grant away his Seignory, and dyeth, the Executors shall haue no remedy for these arrerages, because the grantor himselfe had no remedy for them when he dyed in respect of his grant, and the statute is (in like manner as the Testator might or ought to haue done) Et sic de similibus, for the act giueth no remedy when the Testator himselfe hath dispenced with the arrerages or had no remedy when he dyed.

6. If the Tenant make a Lease for life the remainder for life, the remainder in fee, the Tenant for life payes not the rent due to the Lord, the Lord dyeth, the Tenant for life dyeth, the Executors cannot distreyne vpon him in remainder, because he claymes not by or from the Tenant for life. And so it is of a reuersion for the cause aforesaid. But if a man grant a Rent charge to A. for the life of B. and letteth the lands to C. for life, the remainder to D. in fee, the rent is behinde by diuers yeares, B. dyeth, and after C. dyeth, A. may distreyne D. in remainder for all the arrerages, by the latter branch of the Statute of 32.H.8. and this diuersitie riseth vpon the seuerall pennings of the former branche and of this later, which you may reade in the statute it selfe, and so expounded and adiudged (o) in Edridges case, and the latter clause giueth the lesser estate the greater remedy.

7. For the Arrerages of a Nomine pœnæ, and for relefe, or for ayde, Pur faire fits chiualer, or Pur file marie, this statute * giueth no remedy, For, for the arrerages of the Nomine pœnæ, the Grantee himselfe may haue an action of debt, and consequently his Executors or Administrators, and yet the Nomine pœnæ as an incident to the rent shall discend to the heire. For relefe the Lord cannot haue an action of debt but distreyne, but his Executors by (p) the Common Law shall haue an action of debt, for it is no rent but a casuall improuement of seruices for the said Aides, if the Lord doth leuy them, the sonne and the daughter respectiuely shall haue an action of debt against the Executors or Administrators of the Lord, and if they haue nothing, then against the heire, but this is by the statute (q) of W.1. Note that all manner of arrerages of rents issuing out of a Freehold or inheritance whether they be in money or corne, cattell, fowle, pepper, Comyn, victuall, spurres, gloues, or any other profit to be deliuered or yelded, & whether they be annuall or euery 2.3. or 4. yeares, &c. or the like are within this statute, but worke dayes, or any corporall seruice or the like are not within this statute.

8. A feme sole is seised of a rent in fee, &c. which is behinde and vnpaid she taketh husband, the rent is behinde againe, the wife dyeth, the husband by the Common Law should not haue the arrerages growne due before the mariage, but for the arrerages become due during the couerture the husband might (r) haue an action of debt by the Common Law, but now this statute * by a particular clause giueth the husband the arrerages due before mariage, and the said double remedy for the same, and that he may distreyne for the arrerages growne due during the couerture, so it giueth him that which he could not haue before, and further remedy for that, which the Common Law gaue him, and so it hath beene (s) adiudged.

The Bishop of (t) Norwich had the first fruits of all the Clergie within the Dioceese at euery auoydance, the Church became voyde, & another Parson became Incumbent, who payd the Bishop parcell of his First fruites according to the taxation of the Church, and for the rest he had a day giuen vnto him to pay it, the Bishop dyed, the residue was not payd, whereupon his Executors brought an action of debt, and it is adiudged that no action doth lye, because it is a meere spirituall thing and no lay contract, and therefore the Court had no iurisdiction to hold plea of it. I haue beene the longer in the exposition of the said Statute, for that it is a generall case, and doth concerne most part of the Subiects of England.

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Finis libri secundi.

THE

(m) 23.Eliz.Dier.375.

26.E.3.64. 11.H.4 fo.vltimo. Ognels case. vbi supra. & lib.7 fo.39.b. Lillingtons case.

(o) Lib.5 fo.118. Edridges case.

* 40.E.3.3.b. 11.H.4.85. 14.E.4.4. 20.H.7.1.a. 28.H.8.Dier 24.
(p) 34.E.1. Auowrie 233. F.N.B.122. 10.H.6.11. 11.H.6.8. Mich.22.H.8. Pl.t.429. Leakes case. Ognels case vbi supra. 3.E.3.Debt 157.
(q) W.1. ca.36. F.N.B.82.122.

(r) 26.E.3.64 10.H.6.11. * 22.H.6.25.F.N.B.121.

(s) Hill 17.Eliz.Rot.457. inter Sharpe & Pole. Vid. Ognells case vbi supra.
(t) 19.E.3.Iurisdiction 22.

THE THIRD BOOKE of the first part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Of Parceners.* *Sect.*241

PArceners sont en deux maners, cestalcauoir, Parceners solonq; le course del Common ley, & Parceners solonque custom. Parceners solonque le course del cõmon ley sont, lou hõe ou feme seisie de certaine terres ou tenements en fee simple, ou en taile, nad issue forsq; files et deuie, et les tenements discendont a les issues, et les files entront en les terres ou tenements issint

PArceners are of two sorts (to wit) Parceners according to the course of the Common Law, and Parceners according to the custome. Parceners after the course of the Common Law are where a man or woman seised of certaine lands or tenements in fee simple or in taile, hath no issue but daughters & dieth, & the tenements discend to the issues, and the daughters enter into the lands or tenements

OVr Author hauing treated in his two former bookes, first of estates of Lands and tenements, and in his second booke of Tenures whereby the same haue beens holden: Now in his third booke doth teach vs diuers things concerning both of them, as first the qualities of their estates. 2. In what cases the entry of him that right hath, may bee taken away. 3. The remedies, and in what cases the same may be preuented, or auoyded. 4. How a man may be barred of his right for euer, and in what cases the same may be preuented or auoyded. For the first he hauing spoken of sole estates deuideth the quality of estates into Indeuided, & Conditionall. Indeuided, into coparcenary, ioyntenancy and tenancy in common. Coparcenary into parceners by the Common

Vid.Sect.385

Common Law, and Parceners by the Customs, and hee beginneth his third book with Parceners claiming by discent, which comming by the act of Law, and right of bloud, is the noblest and worthiest meanes whereby lands doe fall from one to another. Conditionall, into conditions expresse or in deed, and Conditions in Law. Conditions in deed, into Gages, which he diuideth into Vadia mortua, and Vadia viua. Vadia mortua, so called because either money or land may bee lost: and Viua, because neither monie nor land can be lost, but both preserued. Then speaketh he of Discents, whereby the entrie of him that right hath may be taken away.

And next to that, of the remedie how to preuent the same, viz by continuall claim. Then he teacheth, how a man hauing a defeasible or an imperfect estate, may perfect and establish the same by three meanes, viz. By Release, By Confirmation, and Attournement, where that is requisite.

discendus a eux, dõques els sont appels Parceners, & quaunt a files els sont forsq; vn heire a lour ancestor. Et els sont appel Parceners, p̃ ceo que per le briefe que ẽ appel Briefe de Participatione facienda, **la ley eux boet coherc̃ q̃ partitiõ fc̃ fait enc̃ eux. Et si sont dux files as queux les fres discendont, donque els sont appels deux Parceners. Et si sont trois files, dõque els sont appels trois Parceners, Et si quater files, quater Parceners, & issint ouster.**

so discended to them, then they are called Parceners, and bee but one heire to their Ancestour. And they are called Parceners, because by the Writ which is called *Breue de participatione facienda*, the Law will constraine them, that partition shall bee made among them: and if there bee two daughters to whome the land discendeth, then they bee called two Parceners, and if there be three daughters, they bee called 3 parceners, and foure daughters, 4 parceners, and so forth.

Hauing spoken of a Discent, being an Act in Law which taketh away an entrie, he doth then speake of a discontinuance, the act of the partie, whereby the entrie of them that right haue shall be taken away. And next vnto that he teacheth, in what case the same may be auoyded by Remitter. After he had treated of discents and discontinuances, which take away entries, but barre not Actions. Lastly, he setteth forth the learning of Warranties, (a curious and cunning kind of learning I assure you) whereby both Entrie, Action, and Right may be barred, & the remedies how they may be preuented before they fall, & in what cases they may be auoyded after they be fallen. And thus haue you an account of the thirteene seuerall Chapters of his third booke. And now his method being vnderstood, let vs heare what our Author will say vnto vs concerning Parceners.

(a) *Bract.li.2.fo.66.71,&c. & 76,&c. & Li.5.fo.443. Brit.fo.58.112 128.183. 184.185.189.193. Flet.li.5.ca.9.li.6.ca.47. Glanu.li.7.ca.3. & li.13.c.11*

¶ *Et quant a files els sont forsque vn heire a lour* (a) *ancester.* This is false printed, for the originall is, Et quanque files els sont, els sont parceners, et sont forsque vn heire a lour aunceſter.

(b) *Bract.li.2.fo.66.76. Flet.vb.sup. Brit.vb.sup. & Statute de Hibernia*

¶ *Parceners.* (b) Ius discendit quasi vni hæredi propter iuris vnitatem, sicut sunt plures filiæ, &c. & vbi omnes simul & in solidum hæredes sunt, plures cohæredes sunt quasi vnum corpus, propter vnitatem iuris quod habent. whereupon it followeth, that albeit where there be two Parceners, (c) they haue moities in the lands descended to them, yet are they both but one heire, and one of them is not the moitie of an heire, but both of them are but vnus hæres.

(c) *Vid.Sect.8.ver. finem.*

And it is to be obserued, that there is a diuersitie betweene a discent, which is an act of the Law, and a purchase, which is an act of the partie. (d) For if a man be seised of lands in fe, and hath issue two daughters, and one of the daughters is atteynted of felony, the father dieth, both daughters being aliue, the one moitie shall discend to the one daughter, and the other moitie shall escheat.

(d) *Flet.li.5.ca.9. Flet.li.6.ca.47.*

But if a man make a lease for life, the remainder to the right heires of A. being dead, who hath issue two daughters, whereof the one is attainted of Felonie, in this case some hath said, that the remainder is not good for a moitie, but voyd for the whole, for that both the daughters should haue beene (as Littleton saith) but one heire.

A man

A man makes a gift in taile, reseruing two shillings rent to himself during his life, and if he & his heire within age, then reseruing a rent of twentie shillings to his heires for euer, he dieth having issue two daughters, the one of full age, the other within age, in this case the Donee shall hold by Fealtie onely, insomuch as the one daughter as well as the other is his heire, and both of them (as Littleton saith) make but one heire, ergo his heire is not of full age, neither is his heire in that case of full age. But if the reseruation had beene, And if he die, his heire neither being within age, nor of full age, &c. in this case the reseruation had beene good; and if it doth not begin in his next heire, it shall neuer begin as this case is, for that the precedencie is not performed. (e) But yet if one of them be of age, and the other within age, she shal haue her age and other priuiledges and aduantages that an heire within age shall haue, and when they are demandants, for the nonage of the one, the Paroll shall demurre against them both. (f) Sunt autem plures participes quasi vnum corpus in eo quod vnum ius habent, & oportet quod corpus sit integrum, & quod in nulla parte sit defectus. And when the right heire doth claime by purchase, he must be (say they) a compleat right heire in iudgement of Law. And therefore if lands be giuen to a man and to the heires females of his bodie, and he hath issue a sonne and a daughter, and dieth, the daughter shall haue the land by discent, but if a remainder be limitted to the heires females of the bodie of I.S. and he hath issue a sonne and a daughter, his daughter shall neuer take it by purchase, for that she is not heire female of the body of I.S. because he hath a sonne.

(e) Temps E.1. Age 128. 8.E.2. Iudgment 240. 30.E.3 7.44 E.3. ge 47. 26. ass. 65. 13.E.3. ge. 51. 28. ass. 12. 29. Ass 25. 57. 34 H.6.4. ass 17.

(f) Fleta lib. 5. ca 9. et Lib. 6. Ca. 47.

If a man giue lands to another, and to the heires males of his bodie, vpon condition, that if he die without heire female of his bodie, that then the Donee shall re-enter, this condition is vtterly void, for he cannot haue an heire female, so long as he hath an heire male.

And as they be but one heire, and yet seuerall persons, so haue they one entire freehold in the land, as long as it remaines vndiuided in respect of any strangers Præcipe. (g) But betweene themselues to many purposes they haue in iudgement of Law seuerall Freeholds, for the one of them may infeoffe another of them of her part, and make liuerie. (h) And this Coparcenarie is not seuered or diuided by Law, by the death of any of them, for if one die, her part shal discend to her issue, and one Præcipe shall lie against them, for they shall neuer ioyne as heires to seuerall Auncestors in any Action Auncestrell, but when one right discends from one Auncestour: and then propter vnitatem Iuris, though they be in seuerall degrees from the common Auncestor, yet shall they ioyne. But the issues of seuerall Coparceners, because seuerall rights discend, shall neuer ioyne as heires to their mothers, and yet when they haue recouered, a writ of Partition lieth betweene them.

(g) 10.E.4. 17.E.3.46.

(h) 37.H.8. 19.H.6.45.

Vid. Sect. 313.

For example, (i) If a man hath issue two daughters, and is disseised, and the daughters haue issue and die, the Issues shall ioyne in a Præcipe, because one right discends from the Auncestor, and it maketh no difference whether the common Auncestor being out of possession, died before the daughters, or after, for that in both cases they must make themselues heirs to the Grandfather which was last seised, and when the Issues (k) haue recouered, they are Coparceners, and one Præcipe shall lie against them. And likewise if the Issues of two Coparceners which are in by seuerall discents, be disseised, they shall ioyne in Assise. But in the same case, if the two daughters had beene actually seised, and had beene disseised, after their deceases the Issues shall not ioyne, because seuerall rights discended to them from seuerall Auncestors: and yet when they haue seuerally recouered, they are Coparceners, and one Præcipe lieth against them, and a release made by one of them to the other is good. And so note a diuersitie inter discensum in capita, & in stirpes.

(i) 7.E.3.20.34. 48.E.3.14. 24.E.3.13. F.N.B.221. 35.H.6.23. 27.E.3.89. 31.H.6.14.b.

(k) 37.H.6.8. 9.E.4.13.b 42.E.3.16.17.

And the Statute of Gloucester cap.6. made Anno 6.Edw.1. speaketh, Si homo murge, &c. If a man dieth: so as that Statute extendeth not but where one dieth, and hath diuers heires, whereof one is sonne or daughter, brother or sister, nephew or neece, and the others bee in a further degree, all their heires from henceforth shall haue their recouerie by writ of Mortdauncestor. And this seemeth to me to be the Common Law, for Bracton who writ before this statute, saith, (l) In casu cum sit assisa mortis anteceſſor coniungenda cum consanguinitate, non erit postea recurrendum ad præcipe de Consanguinitate, sed ad assisam mortis, quia persona quæ propinquior est, & facit Assisam, & trahit ad se personam & gradum remotiorem vt vbi potius procedat assisa quam præcipe quia id quod est magis remotum, non trahit ad se quod est magis iunctum, sed è contrario in omni casu. And herewith agreeth the most of our (m) Bookes: and two Coparceners shall haue a writ of Ayel, and by their count suppose the common Auncestor to be grandfather to the one, and great grandfather to the other.

(l) Bracton lib.4.254.b. Britton fol. 81. 182 & 178. 204. Fleta lib. 5 cap.1. et 2. & 9. in fine.

(m) 19.E.3. Tit. Ioindre in Action 31. 7.E.3.30. et 34. 27.E.3.89. 48.E.3.14. 24.E.3.13. F.N.B.221. Register. Vide 32.E.1. Ioindre in Actio 34. 15.E.3. tit. 29. Temps E.2. lib. 35. 30.E.1. tit. 6. 25.H.6.23.

I haue beene the longer herein, for that this Inheritance of Coparceners is the rarest kind of Inheritance that is in the Law.

Furthermore it is to be obserued, That herein also in case of Coparceners, (n) sometimes the discents is in Stirpes, (viz.) To Stockes or Roots, and sometimes in Capita, To Heads: As if a man hath Issue two daughters and dieth, this discent is in Capita, (viz.) that euerie one shall inherit alike, as Littleton here saith. But if a man hath Issue two daughters, and the

(n) Bracton lib.2.66. Britton cap.71. Fleta lib.5.cap.9.et 6.cap.47.

the eldeſt daughter hath iſſue three daughters, and the youngeſt, one daughter, al theſe foure ſhal inherit, but the daughter of the yongeſt ſhall haue as much as the three daughters of the eldeſt, Ratione ſtirpium, and not Ratione capitum, for in iudgement of Law euerie daughter hath a ſeuerall Stocke or Root.

Alſo if a man hath iſſue two daughters, and the eldeſt hath iſſue diuers ſonnes and diuers daughters, and the youngeſt hath iſſue diuers daughters, the eldeſt ſonne of the eldeſt daughter ſhall onely inherit, for this diſcent is not in Capita, but all the daughters of the youngeſt ſhal inherit, and the eldeſt ſonne is Coparcener with the daughters of the yongeſt, and ſhal haue one moitie, (viz.) his mothers part: ſo that men diſcending of daughters may be Coparceners as well as women, and ſhall toyntly implead and be impleaded, as is afore ſayd.

(o) 20.E.2.Nuper ob. 14. E.N.B.197. 7.E.3.13.

(o) If there be two Coparceners, and the one bring a Rationabili parte, or a Nuper obiit againſt the other, the Defendant claime by purchaſe, and diſcontinue in the bloud, the Plaintife ſhall haue a Mordaunceſter againſt her as a ſtranger for the whole.

¶ *Parceners ſont en deux manners.* Here Littleton doth diuide Parceners, and herewith doe agree the antient bookes of Law.*

* Bract.li.2.fo.76.71.&c. Brit.ca.71. Flet.li.5.ca.9.

¶ *Et ils ſont appels Parceners, &c.* Parceners, Participes, Et dicuntur Participes, quaſi partis capaces, ſiue partem capientes, quia res inter eas eſt communis ratione plurium perſonarum. This Tenancie in the antient bookes of Law is called Adæquatio, and ſometime Familia hirſciſcunda, an Inheritance to be diuided, and many times Parceners are called Coparceners.

(p) Regiſt Orig.76.316. Regiſt.Ind.80. Brit.vb.ſup. Flet.vbi ſup. Bract.vbi ſup. & Li.5.fo.443.b.

¶ Breue de Participatione facienda. This is falſe printed, and ſhould be, De Particione facienda, a writ whereby the Coparceners are compelled to make partition. Item eſt alia Actio mixta, quæ dicitur Actio Familiæ hirciſcundæ, & locum habet inter eos qui communem habent hæreditatem, &c. Et locum habet vt videtur, inter Cohæredes, vbi agitur de proparte ſororum, vel inter alios vbi res inter partes & Cohæredes diuidi debeat, ſicut ſunt plures ſorores, quæ ſunt quaſi vnus hæres, vel inter plures fratres, qui ſunt quaſi vnus hæres ratione rei quæ diuiſibilis eſt inter plures maſculos, &c.

¶ *Des terres & tenements.* It is to bee conſidered of what Inheritances daughters ſhall be Coparceners, and how and in what manner partition ſhal be made betweene them. Wherein it is to be obſerued, That of Inheritances ſome be entire, and ſome be ſeuerall: againe, of entire, ſome be diuiſible, and ſome be indiuiſible. And here it appeareth by Littleton, That Parceners take their appellation, becauſe they are compelled to make partition by writ of Particione facienda; where note, That Littleton alloweth well to find out the true deriuation of words, as often hath beene and ſhall be obſerued.

If a Villeine diſcend to two Coparceners, this is an entire Inheritance, and albeit the Villeine himſelfe cannot be diuided, yet the profit of him may be diuided, one Coparcener may haue the ſeruice one day, one weeke, &c. and the other another day or weeke, &c. and for the ſame reaſon a woman ſhall be endowed of a Villeine, as before it appeareth in the Chapter of Dower. Likewiſe an Aduowſon is an entire Inheritance, (q) and yet in effect the ſame may be diuided betweene Coparceners, for they may diuide it to preſent by turnes.

(q) 13.E.2. tit. Quar. Imp. 170. 17.E.3.38. Flet.li.5.c.9 Britt.ca.2.§.17.

A Rent charge is entire, and againſt common right, (r) yet may it be diuided betweene Coparceners, and by Act in Law the Tenant of the land is ſubiect to ſeuerall diſtreſſes, and partition may be made before ſeiſin of the rent.

(r) 44.E.3.tit.Partie.6. & tit.Auowrie 75. 2.H.6.

Entire Inheritances not diuiſible, we finde diuers in our bookes, and ſome Inheritances that are diuiſible, and yet ſhall not be parted or diuided betweene Coparceners, as hereafter ſhall appeare.

(ſ) If a man haue reaſonable Eſtouers, as Houſebote, Heybote, &c. appendant to his freehold, they are ſo entire as they ſhall not be diuided betweene Coparceners. (t) So if a Cozodie incertaine be granted to a man and his heires, and he hath iſſue diuers daughters, this Cozodie ſhall not be diuided betweene them, but of a Cozodie certaine, Partition may bee made.

(ſ) 2.E.2. tit. Dower 123 (t) 17.E.2. Nuper obiit 12. 16 E.2. Ibid.11. 5.Maria Dier 153.

(u) Homage and Fealtie cannot be diuided betweene Coparceners. (w) So a Piſcharie incertaine, or a Common ſauns nombre cannot be diuided betweene Coparceners for that would be a charge to the Tenant of the Soile. (x) The Lord Mountjoy ſeiſed of the Mannor of Cranford in fee, did by Deed indented and inrolled, bargaine and ſell the ſame to Browne in Fee, in which Indenture this clauſe was contained, Prouided alwaye, and the ſayd Browne did couenant and grant to and with the ſayd Lord Mountjoy, his heirs, and aſſignes, that the Lord Mountjoy, his heires and Aſſignes might dig for Ore in the lands (which were great waſts) parcell of the ſayd Mannor, and to dig turfe alſo for the making of Allome. And in this caſe three poynts were reſolued by all the Iudges. Firſt, that this did amount to a grant of an Intereſt and Inheritance to the Lord Mountjoy, to digge, &c. Secondly, That notwithſtan-

(w) 13.E.2. Quare Impedit 170 Flet.lib.5.cap.9.

(x) Mich.24 et 25. Eliz. inter Comitem de Huntingdon et Seignior Mountioye.

ding

ding this grant. Browne his heires and assignes might digge also, and like to the case of Common Sauns nomber. Thirdly, that the Lord Mountioy might assigne his whole interest to one, two, or more, but then if there be two or more, they could make no diuision of it, but worke together with one stocke, neyther could the Lord Mountioy, &c. assigne his interest in any part of the wast to one or more, for that might worke a preiudice and a surcharge to the Tenant of the Land, and therefore if such an incertaine Inheritance discendeth to two Coparceners, it cannot be deuided betweene them.

Vide 5. Maria Dier 153.

But then it may be demanded, what shall become of these Inheritances. The answere is, that it appeareth in our Bookes that regularly (y) the eldest shall haue the reasonable Estouers, Common, Piscbary, Corody incertaine, &c. and the rest shall haue a contribution, that is, an allowance of the value in some other of the Inheritance, and so of the like. But what if the common Auncester left no other Inheritance to giue any thing in allowance, what contribution or recompence shall the yonger Coparceners haue. It is answered, that if the Estouers or Piscbary or Common be incertaine, then shall one Coparcener haue the Estouers, Piscbary, or Common, &c. for a time, and the other for the like time: as the one for one yeare and the other for another, or more, or lesser time, whereby no preiudice can grow to the Owner of the soyle. Or in case of the Piscbary, the one may haue one fish, and the other the second, &c. or one may haue the first draught, and the second the second draught, &c. And if it be of a Parke, one may haue the first Beast, and the second, the second, &c. And if of a Mill, one to haue the Mill for a time, and the other the like time, or the one, one toll dish, and the other, the second, &c. And this appeareth to bee the ancient Law, for it is said. (z) Sunt aliæ res hæreditariæ quæ veniunt in partitionem quæ cum diuidi non possunt conceduntur vni, ita quod aliæ cohæredes alibi de communi hæreditate habeant ad valorem sicut sunt viuaria Piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem tertium vel quartum, vel secundum tractum, tertium vel quartum. Item in parcis secundam, tertiam aut quartam.

(y) 2.E.2.dower 123.13.E. 2.quar.Imp.170. Fleta vbi supra. Vsae Minor.ea.2 §.17

(z) Bracton lib.2.76. Britton cap.71.72. Fleta lib.5.cap.9.

But now let vs turne our eye to Inheritances of Honour and Dignity. And of this there is an ancient Booke Case (*) in 23.H.3.tit.partition 18. in these words. Note, if the Earledome of Chester discend to Coperceners it shall bee deuided betweene them aswell as other Lands, and the eldest shall not haue this Seigniory and Earledome entire to her selfe, Quod nota, adiudge per totam Curiam. By this it appeareth that the Earledome (that is, the possessions of the Earledome) shall bee deuided, and that where there bee more Daughters then one, the eldest shall not haue the Dignity and Power of the Earle, that is to be a Countesse. What then shall become of that Dignity. The answere is, (a) that in that case the King who is the Soueraigne of Honour and Dignity, may for the incertainty conferre the Dignity vpon which of the Daughters he please. And this hath beene the vsage since the Conquest as it is said.

(*) 23.H.3.tit. partition 18.

(a) 3.H.3.tit.prescription.

But if an Earle that hath his Dignity to him and his heires dieth, hauing issue one Daughter, the Dignity shall discend to the Daughter, for there is no incertainty, but only one Daughter, the Dignity shall discend vnto her and her Posterity as well as any other Inheritance, and this appeareth by many Presidents, and by a late Iudgement giuen in Sampson Leonards Case, who married with Margaret the only sister and heire of Gregorie Fines Lord Dacre of the South, and in the case of William Lord Ros.

But there is a difference betweene a dignity or name of Nobility and an Office of Honour. For if a man hold a Mannor of the King to be high Constable of England, and dye hauing issue two Daughters, the eldest daughter taketh husband, he shall execute the Office soly, and before marriage it shall be exercised by some sufficient Deputy, and all this was resolued by all the Iudges of England, in the case of (b) the Duke of Buckingham. But the dignity of the Crowne of England is without all question descendible to the eldest daughter alone and to her posterity, and so hath it beene declared by Act of Parliament. (*) For Regnum non est diuisibile. And so was the Discent of Troy.

(b) 11.Eliz.Dier 285. the Duke of Buckinghams Case.

(*) 25.H.8.cap.22.

Virgilij Æneid.

Præterea sceptrum Ilione quod gesserat olim,
Maxima natarum Priami———

(b) If a Castle that is vsed for the necessary defence of the Realme discende to two or more Coparceners, this Castle might bee diuided by Chambers and Roomes as other Houses bee, but yet for that it is Pro bono publico & pro defensione Regni, it shall not be diuided, for as one sayth, Propter ius gladij diuidi non potest. And another saith, (*) Pur le droit del espee que ne soeffre diuision en auenture que la force del realme ne defaille pax taunt. But Castles of habitation for priuate vse, that are not for the necessary defence of the Realme ought to bee parted betweene Coparceners aswell as other Houses, and wines may thereof bee endowed, as hath beene said in the Chapter of Dower.

(b) Bracton lib.2. fol.96. Fleta lib.5.cap.9.

(*) Britton 186.187.

Vide Sect.36.

If there be two Coparceners of certains Lands with warrantie, and they make partition

of the Land, the warranty ſhall remayne, becauſe they are compellable, to make partition. (c) But otherwiſe it was of Ioyntenants at the Common Law, as ſhall bee ſaid hereafter in his proper place. (d) Thomas de Eberſton ſeiſed of the Mannor of Eberſton, within the Foreſt of Pickering, had kept time out of mind, a Woodward for keeping of the Woods parcell of that Mannor, and had the barke of all the Trees ſelled in the ſaid Woods by any of the Foreſters of that Foreſt as belonging to his Mannor (which he could not haue without a Preſcription.) Thomas of Eberſton infeoffed two of the ſaid Mannor, betweene whom partition was made, ſo as one of them had the whole halfe in ſeuerality, and the other the other halfe. Robert Wyerne afterwards had the one halfe, and Thomas Thurniſe the other, and they in the Eyre of Pickering claymed to keepe a Woodward within the ſaid Woods, and the barke aforeſaid, and the truth hereof and the Vſage being ſpecially found by the Foreſtors, Verderors, and Regardors, Willoughbie, Hungerford, and Hanburie, Iuſtices Itinerants within that Foreſt gaue iudgement as followeth. Ideo conſideratum eſt quod prædict' Robertus & Thomas habeant Woodwardum & Corticem in boſco prædicto de quercubus prædictis ſibi & hæredibus ſuis imperpetuum. Saluo ſemper iure, &c.

(c) 29. E. 3. garrat's 70.
(d) Itin. Pickering. 3. E. 3. Rot. 34.

Sect. 242.

Item ſi home ſeiſie de tenements en fee ſimple, ou en fee taile, deuy ſauns iſſue de ſon corps engender, & les tenements diſcendont a ſes ſoers, els ſont Parceners, come eſt auantdit. Et en meſne le maner, lou il nad pas ſoers. mes les tenements diſcendõt a ſes aunts, els ſont Parceners, &c. Mes ſi home nad forſque vn file, el ne poit eſtre dit Parcener, mes el eſt appelle file & heire, &c.

ALſo if a man ſeiſed of Tenements in Fee ſimple or in Fee-tayle, dieth without iſſue of his bodie begotten, and the Tenements diſcend to his Siſters, they are Parceners as is aforeſaid. And in the ſame manner, where he hath no Siſters but the Lands diſcend to his Aunt, they are Parceners, &c. But if a man hath but one Daughter, ſhe ſhall not be called Parcener, but ſhee is called Daughter and Heire, &c.

Coſ *en fee taile.* **This muſt be intended of an eſtate taile made** to the Father and to the heires of his body, for otherwiſe if the ſtate Tayle were made to a man and to the heires of his body, his ſiſters cannot inherit. And not only Daughters ſhall be Coparceners, but Siſters, Aunts, great Aunts, &c.

File & heire, &c. **Here by** (&c.) **is implyed Siſter and heire, Aunt and heire, great Aunt and heire, and ſo vpward.**

Sect. 243.

By this Section, and the (&c.) in the end of it. It is to be vnderſtood that there are two kind of partitions betweene Coparceners, the one in deed or expreſſe, and the other in Law or Implicite. Of partitions in deed or expreſſe, ſome bee voluntary whereof Littleton enumerates foure Manners, and one compulſary, that is by Writ of Partition.

Cest aſcauoir, que partition enter parceners poit eſtre fait en diuers maners. Un eſt, quãt els agreecont de faire partition, & font partition de les Tenements, ſicome ſi ſoient deux parceners

AND it is to bee vnderſtood, that partition may be made in diuers manners. One is when they agree to make partition, and do make partition of the tenements. As if there bee two Parceners to deuide between them

a

a deuider enter eux les Tenements en deux parts, cheſcun part per ſoy en ſeueraltie, & ô egal value. Et ſi ſont 3. Parceners a deuider les tenements en trois parts per ſoy en ſeueraltie, &c.

the tenements in two parts, each part by it ſelfe in ſeueraltie, and of equall value. And if there bee three Parceners, to deuide the tenements in three parts by it ſelfe in ſeueraltie, &c.

The firſt partition in deed betweene Coparceners, is that which Littleton here ſpeaketh of, viz. Quant els agreont & font partition de les tenements, &c. cheſcun part per ſoy en ſeueralty & de egall value, &c. If Coparceners make partitions at ful age, and vnmarried, and of ſane memorie of Lands in Fee ſimple, it is good & firme for euer, albeit the values bee vnequall, but if it be of lands intayled, or if any of the Parceners bee of non ſane memorie, it ſhall bind the parties themſelues but not their Iſſues vnleſſe it be equall. Or if any be Couert, it ſhall bind the husband, but not the wife or her heires. Or if any be within age it ſhall not bind the Infant as ſhall be ſaid more fully hereafter. The ſecond partition followeth in the next Section. And here the (&c.) implyeth further, that if there be foure Parceners, then foure parts, If fiue, fiue parts and ſo forth. It further implyeth, that all this muſt be in ſeueralty; whereof and with what limitations this is to be vnderſtood it hath beene declared before. *Vide Sect.241.*

Section 244.

CVNauter partition eſt, a eſlier per agreement enter eux, certeine de lour amies, de faire partitiõ des terres ou tenemẽts en le forme auantdit. Et en tiels caſes apres tiel partition, le eigne fille prymerment eſlie- ra vn des partes iſſint deuides, que el voit auer pur ſa part, & donques la ſecond fille poſ- cheine apres luy auter part, & donques le tierce ſoer auter part, donques le 4. auter part, &c. ſi iſſint ſoit que ſoient pluſors ſoers, &c. ſi ne ſoit auterment agree enter eux. Car il poit eſtre agree enter eux, que vn auera tiels tenemẽts, & vn autr tiels tenemẽts, &c. ſans aſcũ tiel prymer election, &c.

ANother Partition there is, *viz.* to chooſe by agreement betweene themſelues certaine of their Friends to make partition of the Lands or Tenements in forme aforeſaid. And in theſe Caſes after ſuch partition, the eldeſt Daughter ſhall chooſe firſt one of the parts ſo deuided which ſhe will haue for her part, and then the ſecond Daughter next after her another part, and then the third Siſter another part, then the fourth another part, &c. if ſo bee that there be more Siſters, &c. vnleſſe it bee otherwiſe agreed betweene them. For it may be agreed betweene thẽ that one ſhall haue ſuch Tenements, and another ſuch Tenements, &c. without any primer election.

CDOnques le 4. auter part, &c. here the (&c.) implyeth the fifth ſiſter, and after her the firſt, and ſo forth. 31. Aſſ. 26.

CCar il poet eſte agree inter eux que vn auera tiels tenements, & vn auter tiels tenements, &c.

Here by this (&c.) is implyed diuers rules of Law prouing the concluſion of Littleton in this Section. viz. modus & conuentio vincunt legem. Pacto aliquid licitum eſt, quod ſine pacto non admittitur. Quilibet poteſt renunciare iuri pro ſe introduct' But with this limitation that theſe Rules extend not to any thing, that is againſt the Common Wealth, or common right. For conuentio priuatorum non poteſt publico iuri derogare.

Sect. 245.

CEnitia pars. It is called in old bookes * Æisnetia which is deriued of the French word Eisne or eldest, as much to say as the part of the eldest, for Bracton saith, Quod Eisnetia semper est præferenda propter priuilegium ætatis, sed esto quod filia primogenita relicto nepote vel nepte in vita patris vel matris decesserit, præferenda erit soror antenata tali nepoti vel nepti quantum ad Eisnetiam quia mortem parentum expectant. And herewith agreeth Fleta also, Quod nota, whereby it appeareth that Ænitia pars is personall to the eldest, and that this prerogatiue or priuiledge discendeth not to her issue, but the next eldest sister shall haue it, (f) And here is a diuersity to be obserued betweene this case of a partition in deede by the act of the parties, (for there the priuiledge of election of the eldest daughter shall not discend to her issue) And where the law doth giue the eldest any priuiledge without her act, there that priuiledge shall discend. As if there be diuers Coparceners of an Aduowson * & they cannot agree to present, the Law doth giue the first presentment to the eldest, and this priuiledge shall discend to her issue, nay her Assignee shall haue it, and so shall her husband that is Tenant by the Curtesie haue it also.

* Bract. lib. 2. 77. Fleta, lib. 5. ca. 9. Britton, ca. 72.

(f) 45.E.3. fines 41. 19.E.3. quar. imp. 59. 18.E.2. ibid. 176. 5.H.5. 10. 38.H.6.9. Dodt. & Stud. 116. 117. Vid. Bracton. 238. 249. *5.H.7.8. 34.H.6.40. 11.H.4.54. 20.E.3. quar. Imp. 63. 34.E.3. Ibid. 198. 15.E.3. Dar. Presentment 11. 19.E.3. 20. 21. 21.E.3. 21. F.N.B. 32.

CDonques il est dit leigne soer eslier pluis darreine, &c. By this and the &c. in the end of this Section is implyed the rule of Law is Cuius est diuisio, alterius est electio. And the reason of the Law is for auoyding of partiality.

Ipsæ etinim Leges cupiunt vt Iure regantur.

which might apparantly follow if the eldest might both diuide and chuse. Now followeth the third partition in Deede.

Sect. 246.

CVn auter partition ou allotment est, sicome soient quater parceners & apres le partition de les terres fait, chescun part del terre soit per soy solement escript en vn petit escrouet, & soit couert tout en cere, en le maner dun petit pile, issint que nul poit veier lescrouet, & donque soient les 4. piles de cere mis en vn bõnet a garder, en les maines dun indifferent home, &

ANother partition or allotment is, as if there be foure parceners and after partition of the lands be made, euery part of the land by it selfe is written in a little scrowle, and is couered all in waxe in manner of a little ball, so as none may see the scrowle, and then the 4. balls of waxe are put in a hat to bee kept in the hands of an indifferent man, and then the eldest daughter shall first

donqs

donqs leigne file primermẽt mettra sa maine en le bonnet, quel prendra vn pile de cere ouesqz lescrouet deins ẽ le pile pur sa part, & donqz le second soer mettra sa maine en le bonnet & prendra vn auter, le tierce soer le 3. pile, & le 4. soer le 4. pile, &c. & en ceo cas coulent chescun de eux luy tener a sa chance & allotment.

put her hand into the Hat and take a ball of waxe with the scrowle within the same ball for her part, And then the second sister shall put her hand into the hat and take an other, the 3. sister the 3. ball, and the 4. sister the 4. ball. And in this case euery one of them ought to stand to their chance and allotment.

¶ *Llittlemẽt.* Of this partition by Lots ancient Authors * write that in that case Coparceners Fortunam faciunt iudicem: And Littleton here tearmeth it chance, for in the end of this Section he saith, that in this case euery of them ought to hold her selfe to her chance, & of this kinde of diuision you shall reade in holy Scripture, where it is said, Dedi vobis possessionem quam diuidetis sorte.

* *Fleta lib. 5. ca. 9. Bracton, lib. 2. 75. Britton, ca. 72. Vid. Numbers, ca. 26. verse 54. 55. & ca. 33. verse 54. Of diuision by lots.*

The &c. in the end of this Section implyeth that if there be more coparceners there must be more balls according to the number of the parceners.

Sect. 247.

¶ Item, vn auter partition il y ad, sicome sont quater Parceners, & ils ne boilent agreer a partition destre fait enter eux, donque lun poit auer bẽe De partitione facienda enuers les auts trois: ou deux ỏ eux poient auer bẽe De partitione facienda enuers les auters deux, ou trois de eux poient auer bẽe De partitione facienda enuers le quart, a lour election,

ALso there is another partition, As if there bee foure parceners, and they will not agree to a partition to bee made betweene them, then the one may haue a Writ of *Partitione facienda* against the other three, or two of them may haue a Writ of *Partitione facienda* against the other two, or three of them may haue a Writ of *Partitione facienda* against the fourth at their election.

¶ HEre followeth the fourth Partition in Deede. Littleton hauing spoken of voluntary Partitions, or Partitions by consent; Now he speakes of a Partition by the compulsarie meanes of Law where no Partition can bee had by consent. Now of what inheritance partition may bee made by the Writ of Partitione facienda may partly appeare by that which hath beene said. Moreouer it is to be obserued that the words of the Writ De partitione facienda be * Quod cum eædem A. & B. insimul & pro indiuiso teneant tres acras terræ cum pertinen', &c. And note that this word (Tenet) in a Writ doth alwayes imply a Tenant of a freehold. And therefore (g) if one Coparcener maketh a Lease for yeares, yet a writ of Partition doth lye. But if one or both make a Lease for life, a Writ of Partition doth not lye betweene them, because Non insimul & pro indiuiso tenent, they doe not hold the freehold together, and the Writ of partition must be against the Tenant of the freehold. (h) If one Coparcener disseise another during this disseisin a Writ of partition doth not lye betweene them for that Non tenent insimul & pro indiuiso.

* 3.E.3.47.48.

(g) 21.E.3.57. F.N.B.62.g. 28.H.6.2. 11.H.4.3. 4.H.7.10.b.

(h) 4.H.7.9. 11.Ass.23.

But there be other Partitions in deede then here hath beene mentioned. (i) For a Partition made betweene two Coparceners that the one shall haue and occupie the land from Easter vntill the first of August only in seuerality by himselfe, and that the other shall haue and occupie the land from the first of August vntill the Feast of Easter yearely to them and their heires, this is a good partition. Also if two Coperceners haue two Mannors by discent, and

(i) *Temp.E.1. Partition 21. F.N.B.62.I.*

and they make partition, That the one shall haue the one Mannor for one yeare, and the other the other Mannor for this yeare, and so alternis vicibus to them and their heires, this is a good Partition. The same Law is if the partition bee made in forme aforesayd, for two or more yeares, and each Coparcener haue an estate of Inheritance, and no Chattell, albeit either of them alternis vicibus haue the occupation but for a certaine terme of yeares.

Of Partitions in Law, some be by act in Law without iudgement, and some be by iudgment, and not in a Writ de Participione facienda. And of these in order.

(k) If there be Lord, three Coparceners Meines, and Tenant, and one Coparcener purchase the Tenancie, this is not onely a partition of the Meinaltie, being extinct for a third part, but a diuision of the Seignioxie Paramount, for now he must make seuerall Auowries.

(l) If one Coparcener make a Feoffement in fee of her part, this is a seuerance of the Coparcenarie, and seuerall Writs of Præcipe shall lie against the other Coparcener and the Feoffee.

(m) If two Coparceners be, and each of them taketh husband and haue Issue, the wiues die, the Coparcenarie is diuided, and here is a partition in Law.

(n) If two Coparceners be, and one disseise the other, and the Disseisee bringeth an Assise, and recouer, it hath beene sayd, That she shall haue iudgment to hold her moitie in seuerally. And this seemeth (say they) verie antient, and thereupon vouch Bracton, * Si res fuerit communis locum haberi, poterit communi diuidendo indicium. And (o) so (say they) if the one Coparcener recouer against another in a Nuper obijt, or a Rationabili parte, the iudgement shal be, That the Demandant shall recouer and hold in seueraltie. But Britton is to the contrarie, for he saith, * Et si ascun des Parceners soit enget ou disturbe de sa seisin per ses auters Parceners, vn, ou plusors, al disseisee viendra assise per seuerall pleint sur ses Parceners & recouera, mes nemy a tener en seueraltie, mes en common solonque ceoque auant le fist, &c. (p) And this seemeth reasonable, for he must haue his iudgement according to his Plaint, and that was of a moitie, and not of any thing in seueraltie, and the Sherife cannot haue any warrant to make any partition in seueraltie or by Meets and Bounds.

(k) 36.H.6.7.

(l) 37.H.6.8.43.E.3.1.

(m) 17.E.3.14.15.

(n) 12.E.3.*Iudgm.*162. 7.*Ass.*10.7.E.3.49.10.*Ass.*17 12.*Ass.*5.17.10.E.3.40.43. 28.*Ass.*35.23.*Ass.*18. 20.E.3.*Ass.*62. 3 E.3.48 b. 19.H.6.45.7.H.6.4.3.*Ed.*4. 10.

* *Bract.li.*4.*fo.*216.*b.*

(o) 3.E.3.48. 21.R.2.*tit. Nuper ob.*22. 4.H.7.10. 30.E.1.*Nup.ob.*18. F.N.B.9.b.

* *Brit.fo.*112.*a.*

(p) *Li.*6.*fo.*12.*&* 13. *Merriens case, accorde.*

Section 248.

NOte the first iudgment in a Writ of Partition, whereof Littleton here speaketh, is, Quod partitio fiat inter partes prædictas de tenementis prædictis, cum pertinentijs, after which Iudgement, by this &c. viz. Tenements, &c. is implied, That a Writ shall be awarded to the Sherike, Quod assumptis tecum 12. liberis & legalibus hominibus de Viceneto tuo, per quos rei veritas melius sciri poterit, in propria persona tua accedas ad tenementa prædicta cum pertin, & ibidem per eorum sacramen in præsentia partium prædictarum per te præmuniend' si interesse voluerint, prædicta tenementa cum pertin per sacramen bonorum & legalium hominum prædictorum habito respectu ad verum valorem earundem in duas partes equales partiri & diuidi, & vnam partem partium illarum, &c.

*Brast.fo.*66.*&c. Brit.*71.*&c. Brit.ca.*72 *Flet.li.*5.*ca.*9.

The last &c. in this Section is euident.

Ockam cap. Quid sit liber iudicarius

40.E.3.45.9.*ass.*2.8.*ass.*35. 40.E.3.2.*Regist.* F.N.B.16.

¶ *Iudgement*, Iudicet quãt iudgement ſra done ſur tiel bꝛief, le iudgment ſerra tiel q̃ partition ſerra fait enter les parties, & que le Vicount en ſon pꝛoper perſon alera a les terres & tenements, &c. & que il per l' ſerement de xij. loyalx homes de ſon Bayliwicke, &c. ſerra partition enter les parties, et que lun part de meſmes les Terres & Tenements ſoient Aſſignes al plaintif, ou a lun des plaintifs, et vn auter part a vn auter Parcener, &c. nient feaſant

AND when iudgement shal be giuẽ vpon this Writ, the iudgment shal be thus, That partition shall be made between the parties, & that the Sherife in his proper person shall go to the lãds and tenements, &c. & that hee by the otah of 12 lawful men of his Bailiwicke, &c. shall make partition betweene the parties, & that the one part of the same Lands & tenements shall bee assigned to the pl', or to one of the plaintifs, & another part to another parcener, &c. not making mention in the

ſant mention en le iudgement de leigne ſoer pluis q̄ ò puiſñ. Iudgement, of the eldeſt ſiſter, more than of the youngeſt.

cium eſt quaſi iuris dictum, ſo called, becauſe ſo long as it ſtands in force, pro veritate accipitur, and cannot bee contradicted: And thereupon Antiquitie called that excellent Booke in the Exchequer, Domeſday, Dies Iudicii, Sicut enim diſtricti & terribilis examinis illa nouiſſima ſententia nulla tergiuerſationis arte valet eludi, &c. ſic ſententia eiuſdem libri inficiari non poteſt, vel impune declinari ob hoc nos eundem librum iudiciarium nominamus, &c. quod ab eo ſunt, & prædicto iudicio non licet vlla ratione diſcedere. By Littleton it appeareth, That the formes of Judgements, pleas, and other legall proceedings, doe conduce much to the right vnderſtanding of the Law, and of the reaſon thereof, as here Littleton rightly collecteth, vpon the forme of the iudgement that the Sherife ſhall deliuer to them ſuch parts as he thinkes good, and that the eldeſt Coparcener ſhal haue no election when partition is made by the Sherife. And it is to be obſerued, that there be two Judgements in a Writ of Partition: Of the former Littleton ſpeaketh in this place, And when partition is made by the oath of twelue men, and aſſignement and allotment thereof, and ſo returned by the Sherife, then the latter iudgment is, Ideo conſideratum eſt, quod partitio prædicta firma & ſtabilis imperpetuū teneatur, and this is the principall iudgement. (q) And of the other before this be giuen, no Writ of Error doth lie.

(q) *Lib.11.fol.40. Hill.39.Eliz. Rot.327.in Banke le Roy inter Anſ Comites de War. et le Seignior Berkley.*

¶ *Shireue* is a word compounded of two Saxon words, viz. Shire, and Reue. Shire, Satrapia, or Comitatus, commeth of the Saxon Verbe Shiram, i. Partiri, for that the whole Realme is parted and diuided into Shires: And Reue is Præfectus, or præpoſitus; ſo as Shireue is the Reue of the Shire, Præfectus Satrapiæ, Prouinciæ, or Comitatus. And he is called Præfectus, becauſe he is the chiefe Officer to the King within the Shire; for the words of his Patent be, Commiſſimus vobis cuſtodiam Comitatus noſtri de, &c. And he hath a threefold cuſtodie, triplicem cuſtodiam, viz. Firſt, Vitæ Iuſtitiæ, for no ſuit begins, and no Proceſſe is ſerued but by the Sherife. Alſo he is to returne indifferent Iuries for the triall of mens liues, liberties, lands, goods, &c. Secondly, Vitæ legis, hee is after long ſuits and chargeable, to make execution, which is the life and fruit of the Law. Thirdly, Vitæ Reipublicæ, He is Principalis Conſeruator pacis within the Countie, which is the life of the Commonwealth, Vita Reipublicæ pax.

He is called before Sect. 234. Viſcount, in Latyne, Vicecomes, i. Vice Comitis, that is, in ſtead of the Earle of that Countie, who in antient time had the regiment of the Countie vnder the King. For it is ſayd in the Mirror, * That it appeareth by the ordinance of antient Kings before the Conqueſt, That the Earles of the Counties had the cuſtodie or gard of the Counties, and when the Earles left their cuſtodies or gards, then was the cuſtodie of Counties committed to Viſcounts, who therefore (as it hath beene ſayd) are called Vicecomites, and Ockam cap. Quid centuī, &c. Porro Vicecomes dicitur, quod vicem Comitis ſuppleat.

Vide the ſecond part of the Inſtitutes W.1.cap.10.
(*) *Mirror cap.1.§.3.*
Ockam cap. Quid Centur. &c.

Marculphus ſaith, This office is, Iudiciaria dignitas. Lampridius, That it is Officium dignitatis. Forteſcue ſaith, Quòd Vicecomes eſt nobilis officiarius. And ſee there, and obſerue well his honourable and ſolemne election and creation at this day. But to confirme all that hath bin ſaid touching this point, and to conclude the ſame, among the Lawes of Edward the Confeſſor I find it thus recorded, Verum quod modo vocatur Comitatus olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur conſulatus, & qui modo vocantur Vicecomites tunc temporis Vice conſules vocabantur; ille vero dicebatur viceconſul qui conſule abſente ipſius vices ſupplebat in iure & in foro. Herein many things are worthie of obſeruation: Firſt, for the antiquitie of Counties. Secondly, That which wee called Comitatum, the Romanes more Latinely called Conſulatum. Thirdly, whom the Saxons afterwards called (as hath beene ſayd) Shireue or Earle, the Romans called Conſul. Fourthly, That the Sherife was deputy of the conſul or earle, & therfore the Romans called him Viceconſul, as we at this day cal him Vicecomes. Fiftly, That the Sherife in the Romans time, and before, was a Miniſter to the Kings Courts of Law & Juſtice, & had then a Court of his own, which was the County Court, then called Curia Conſulatus, as appeareth by theſe words, Ipſius vices ſupplebat in iure & in foro. Sixtly, That this Realme was diuided into Shires and Counties, and thoſe Shires into Cities, Burroughs, and Townes, by the Brittains. So that King Ælfreds diuiſion of Shires and Counties, was but a renouation or more exact deſcription of the ſame. Laſtly, the conſequence that will follow vpon theſe things being ſo antient, (as in the time of, and before the Romans) the ſtudious Reader will eaſily collect. And afterwards, fol 135 amongſt the Lawes of the ſame King it appeareth, That thoſe whom the Saxons ſometimes called (and now we call) Ældermen, or Eorles, the Romans called Senatores, Et ſimiliter olim apud Britones temporibus Romanorum in regnō iſto Britanniæ vocabantur ſenatores qui poſtea temporibus Saxonū vocabantur Aldermani, non propter ætatem, ſed propter ſapientiam & dignitatem cum quidam adoleſcentes eſſent iuriſperiti tamen & ſuper hoc experti.

Forteſcue cap.24.
12.R.2.cpa.
Lambert fol.129.12.
Cæſar poliebro Huntingdon polidor inter leges. Malmucii. Hooker lib.2.

¶ De

¶ *De son Bayliwicke.* It appeareth before, that the Enquest must be De vicineto, of the place where the lands doe lie, and not generally de Baliua tua. By this it appeareth, That the Sherife is Balivus, and his Countie called Baliua, and therefore it is good to be seene, what Balivus originally signified, and whereof it is derived.

Flet. lib.2.cap.67.

Baylife is a French word, and signifies an Officer concerning the administration of Justice of a certaine Province, and because a Sherife hath an office concerning the administration of Justice within his Countie or Bayliwicke, therefore he calleth his Countie, Baliua sua, for example, when he cannot find the Defendant, &c. he returneth, Non est inuentus in Baliua mea. I haue heard great question made, what the true exposition of this word Balivus is. In the Statute of Magna Charta cap. 28. the letter of that Statute is, Nullus Balivus de cætero ponat aliquem ad legem manifestam nec ad iuramentum simplici loquela sua sine testibus fidelibus ad hoc inductis. And some haue sayd, That Balivus in this statute signifieth any Judge, for the Law must be waged and made before the Judge. And this Statute (say they) extends to the Courts of common Pleas, Kings Bench, &c. For they must bring with them Fideles testes, &c. and so hath been the vsage to this day.

Bract lib.3.tract.2.cap.33. nu.3. Idem lib.3.fo.121.b.

Bract.li.3.136.b. Brit fo.56. Flet.li.2.ca.63.

But I haue perused a verie antient and learned reading vpon this Statute, and the Reader taketh it, That at the Common Law before this Statute, he that would make his Law in any Court of Record, must bring with him Fideles Testes. And this opinion herein is warranted by Glanuile, who wrote in the raigne of Henrie the second. But the Reader holdeth, That in the Courts which were not of Record, as the Countie Court, the Hundred Court the Court Baron, &c. there the Def. without any faithfull witnesses, might before this Stat. haue made his Law: for remedie whereof this Act was made, and therefore (saith he) the statute extendeth to the Judges of such Courts as are not of Record. In 10. H. 4. it is holden, That if a Lord that hath a Franchise in a Leet, doth not enquire of things enquirable, and punish them, the Sherife shall enquire in his Turne, Et si le Vicount ne fare en son Torne, le Baylie le Roy enquirer quant il vient, ou autrement serra inquise per Iustice en Eire. Where Baylie le Roy is vnderstood Iustice le Roy. And in the Mirror * it is holden, That the Statute doth extend to euerie Justice, Minister of the King, Steward, &c. and all comprehended vnder this word Baylife.

Glanu.li.1.ca.9.

10.H.4.4.

** Mir.ca.5.§.2. Vt. Bract. fo.409. Flet.li.2.ca.63.56.*

The chiefe Magistrates in diuers antient Corporations are called Baylifs, as in Ipswich, Yarmouth, Colchester, &c. And Baylife in French, is Diœcetes Nomarcha, in English, a Baylife or Gouernor. But of this thus much shall suffice.

Sect. 249.

Brit. fo.185.b. acc. Bract. l.2. fo.71. &c. Flet.li.5.ca 9.

¶ *South son Seale, &c.* Note, the partition made and deliuered by the Sherife and Iurors, ought to bee returned into the Court vnder the Seale of the Sherife, and the seals of the twelue Iurors, for the words of the Judiciall writ of Partition, which doth command the Sherife to make partition, are, Assumptis tecum 12. &c. (so as there must be twelue) & partitionem inde, &c. scire facias Iusticiarijs, &c. sub sigillo tuo, & sigillis eorum per quorum sacramentum partitionem illam feceris, &c.

¶ Et de la partition que l' Vicount ad issint fait, il ferra notice as Justices south son Seale, a les Seales d' chescun de les 12. &c. Et issint en c' case poies veier que leigne soer nauera my la primer election, mes le Vicount luy assignera sa part que el auera, &c. Et poit estr' que le Vicount doit assigner primerm't vn part a le plus puisn', &c. a Darreinement al eigne, &c.

And of the partition which the Sherife hath so made, hee shall giue notice to the Iustices vnder his Seale, and the seales of euerie of the 12. &c. And so in this case you may see, that the eldest sister shall not haue the first election, but the Sherife shall assigne to her her part which shee shal haue, &c. And it may be that the Sherife will assigne first one part to the youngest, &c. and last to the eldest, &c.

And this is the reason wherfore in this case the partition which they make vpon oath, ought to be returned vnder their Seales: and the reason of that is for the more strengthening of the partition

tition by the 12. and that the Sherife should not returne what partition he would. Now after all this, this (&c.) viz.12.&c. doth imply, that the principall iudgement vpon the partition so returned is, Ideo consideratum est per Curiam quod partitio firma & stabilis imperpetuum teneatur, the latter two (&c.) are euident.

Lib.11.fol.40.in Mercalfes Case

Section 250.

¶ Et nota q̄ partition per agreement parenter parceners, poit estre fait per la ley enter eux, auxibien per parol sans fait, come per fait.

And note, that partition by agreement betweene Parceners may bee made by Law betweene them, aswell by paroll without Deed, as by Deed.

¶ Here it appeareth that (r) not only Lands and other things that may passe by Liuerie without Deed, but things also that doe lie in grant, as Rents, Commons, Aduowsons and the like that cannot passe by grant without Deed, whether they be in one Countie or in seuerall Counties may be parted and deuided by Paroll without Deed. (s) But a partition betweene Ioyntenants is not good without Deed, albeit it be of Lands and that they bee compellable to make partition by the Statutes of 31.H.8.cap.10. and 32.H.8 cap 32 because they must pursue that Act by writ, de partitione facienda, & a partition betweene ioyntenants without writ remayns at the Common Law which could not be done by Paroll. And so it is and for the same reason of Tenants in Common. But if two Tenants in Common be, & they make partition by Paroll, & execute the same in seueralty by Liuerie this is good, and sufficient in Law. And therefore where Bookes say, that Ioyntenants made partition without Deed, it must be intended of Tenants in common, and executed by Liuerie.

(r) 3.E.4.9. 10.9.E.4.38. 11.H.4.3. 9.H.4. Partition 13. 21.E.3.38.

(s) *Vide Sect.* 290. 3.H.4.1. 19.H.6.25. 28.H.6.2. 3.E.4.9.10. 47.E.3.22. 47.Ass.8. 19.H.6.1. 17.E.3.46. 30.Ass 8. *Lib.4.fol.73. Li.6.fol.12.13.* 2.H.7.5. *Dier* 18.Eliz.358. 31.H.8.*Dyer* 46. 2.Eliz. *Dyer* 179. 28.H.8.*Dyer* 29. 1.*Mar.Dyer* 98.

Nota, betweene Ioyntenants there is a twofold priuitie, viz in estate and in possession, betweene Tenants in Common, there is priuitie only in possession, and not in estate, but Parteners haue a threefold priuitie, viz. in estate, in person, and in possession.

Section 251. & 252.

¶ Item si deux meales discendont a deux Parceners, & lun meale vault per an 20. s. lauter forsque 10. s. per an, en cest cas partition poit estre fait enter eux en tiel forme, cestascauoir, que vn parcener aura lun meale, & que lauter parcener aura lauter meale, & celuy que auer le meale, que est de value de 20 s. & ses heires, payera vn annual rent

Also if two Meses discend to two Parceners, and the one Mease is worth twenty shillings *per annum*, and the other but ten shillings *per annum*. In this case partition may bee made betweene them in this manner, to wit, the one Parcener to haue the one Mease, and the other Parcener the other Mease. And she which hath the Mease worth 20. shillings *per annum*, and her heires shal pay

¶ *Per parol.* Nota, Here (t) a Rent may be granted for perfitie of partition without Deed, euen as a Rent in case of a Lease for yeares, for life, or a gift in taile may bee reserued without Deed, and so may a Rent be assigned to a woman out of the Land whereof she is Dowable, &c. without Deed, but albeit an exchange for Lands in the same Countie may be without Deed, yet (u) a Rent granted for egalitie of the same exchange cannot be without Deed, and the cause of the difference is apparant, for Coparceners are in by discent, and compellable to make partition.

(t) 8.E.3.16. 21.Ass.1. 21.E.3.38. 11.H.43.61. 45.E.3.21. 2.H.6.14. 21.H.6.11. 1.*Mar.Dyer* 91.

¶ *Le Rent, &c.* (w) The same Law is of Common of Estoners, or a Corodie, or a Common of

of Paſture, &c. or a way granted vpon the partition by the one Coparcener to the other. All which and the like albeit they lye in grant, yet vpon the partition may they be granted without deed.

¶ *Iſſuant hors de meſme le meaſe, &c.*

(x) 1. Marie Dier 91.

(x) For if it bee granted out of other Lands then diſcended to the Coparceners then there muſt be a Deed.

(z) 29. Aſſ. 23. 29. E. 3. 9. b. Pl. Com. 34.

(z) But if the Rent be granted generally (out of no land in certaine) for oweltie of partition, pro reſiduo terræ, it ſhall bee intended out of the purpartie of her that granteth it.

(a) 15. H. 7. 14. 29. Aſſ 23. 29. E. 3 9. b.

(a) If there bee three Coparceners and they make partition, and one of them grant twentie ſhillings per annum out of her part to her two ſiſters, and their heires, for Egalitie of partition, the Grantees are not ioyntenants of this Rent, but the Rent is in nature of Coparcenary, and after the death of the one Grantee, the moity of the rent ſhall diſcend to her iſſue in courſe of Coparcenary, and not ſuruiue to the other, for that the Rent doth come in recompence of the Land, & therefore ſhall enſue the nature thereof, and if the grant had beene made to them two of a Rent of twenty ſhillings, viz. to the one ten ſhillings, and to the other ten ſhillings, yet ſhall they haue the Rent in courſe of Coparcenary, and ioyne in action for the ſame.

de v. s. iſſuant hors de meſme le meaſe a lauter parcener, & a ſes heires a touts iours, pur ceo que cheſcun de eux aũoit oweltye en value.

a yeerely rent of fiue ſhillings, iſſuing out of the ſame Meaſe to the other Parcener and to her heires for euer, becauſe each of them ſhould haue equalitie in value.

Sect. 252.

¶ Et tiel particion fait per parol eſt aſſets bone, & meſme le Parcener q̃ auera le rent & ſes heires, purront diſtreiner de common droit, pur le rent en le dit meaſe de le value de 20. s. ſi le rent de 5. s. ſoit aderere en aſcun temps en quecunque mains q̃ meſme le meaſe deuiendra, coment que ne fuit vnques aſcun eſcripture de ceo fait enter eux ỏ tiel rent.

And ſuch partition made by parol is good enough, and that Parcener who ſhal haue the rent and his heires may diſtreine of common right for the Rent in the ſaid meaſe, worth twentie ſhillings, if the rent of 5. ſhillings be behind at any time, in whoſe hands ſoeuer the ſame meaſe ſhall come, although there neuer were any writing of this made betweene them for ſuch a rent.

(b) 29. Aſſ 23. 29. E. 3. 9. 17. E. 3. 10.

(b) If one Coparcener be married, and for oweltie of partition the husband and wife grant a Rent to the other two out of the part of the Fem Couert, this partition being equall, ſhall charge the part of the Fem Couert for euer.

(c). 38. E. 3. 26. b.

(c) If two Coparceners by Deed indented alien, both their parts to another in fee, rendring to them two and their heires a Rent out of the Land, they are not ioyntenants of this Rent, but they ſhal haue the Rent in courſe of Coparcenary, becauſe their right in the Land out of which the Rent is reſerued, was in Coparcenary.

(e) 1. Marie Dyer 91. 8. E. 3. 16. and other the Bookes aboue ſaid.

¶ *Purront diſtreiner de common droit, &c.* That is, (e) in this caſe the Law doth giue a diſtreſſe, leſt the Grantee ſhould be without remedie, for the which vpon the partition ſhe hath giuen a valuable recompence in Land, which diſcended, &c. And ſo in the caſe of Dower aboue mentioned.

Sect. 253.

¶ *Terres & Tenements, &c.* here (&c.) implyeth a Caution, viz. that they bee ſuch Lands

¶ Et meſm̃ l' maner eſt, de touts maners de terres & tenements

IN the ſame manner it is of all manner of Lands and Tene-

ments

ments, &c. lou tiel rent eſt reſerue a vn, ou a diuis Parceners ſur tiel partition &c. Mes tiel rent neſt pas rent ſeruice, mes eſt rent charge de cõmon droit ewe & reſerue pur egaltie de partition.

ments, &c. where ſuch rent is reſerued to one or to diuers parceners vpon ſuch partition, &c. but ſuch rent is not Rent ſeruice but a rent charge of common right had and reſerued for egaltye of partition.

and tenements out of which a Rent for egaltye of partition may be granted, whereof ſufficient hath beene ſaid before.

¶ *Reſerue al vn.* Here reſeruation is taken for a grant, and if it be vſed vpon the partition, doth amount in this caſe to a grant, which is worthy the obſeruation.

Sect. 254.

¶ Et nota que nulles ſont appelles parceners p le common ley, mes females, ou les heires de females que veignont a terres & tenements per diſcent. Car ſi ſoers purchaſe terres ou tenements. de ceo ils ſont appelles ioyntenants, & nemy parceners.

And note that none are called parceners by the Common law, but females or the heires of females which come to lands or tenements by diſcent: for if ſiſters purchaſe lands or tenements of this they are called ioyntenants and not parceners.

This needes no explanation.

Sect. 255.

¶ Item ſi deux Parceners de terr̃ en fee ſimple, font partition enter eux, & la part de vn vault pluis q̃ le part d̃ lauter, ſi els fueront al temps de la partition de pleine age, ſ. de 21 ans, donqꝫ la partition, touts dits demurrera, & ne ſerra vnques defeat. Mes ſi les tenements (dont els font partition) ſoyent a eux en fee taile, & le part que lun ad eſt

Alſo if two parceners of land in fee ſimple make partition between themſelues, and the part of the one valueth more then the part of the other, if they were at the time of the partition of full age, s. of 21. yeares, then the partition ſhall alway remaine and bee neuer defeated. But if the tenements (whereof they make partition) be to them in fee taile, and the part of the one

¶ *Donques le partition touts dits demurrera, &c.* Hereby it appeareth that the inequality of the value ſhall not impeach a partition made of lands in fee ſimple betweene Coperceners of full age, no more then it ſhall doe in caſe of an exchange.

9. H. 6. 5. and other the bookes aboue-ſaid.

¶ *Ils ſont concludes durant lour vies.* This inequall partition doth ſo concludo the parceners themſelues, as ſhe that hath the vnequall part ſhall not auoyde it during her life.

¶ *Concludes.* This word is deriued of Con and Claudo, and in this ſence ſignifieth to cloſe or ſhut vp her mouth that ſhee cannot ſpeake to the contrary.

Husband & wife tenants in

11. Ass.p.23.

in speciall tayle of certaine lands in fee haue issue a daughter, the wife dyeth, the husband by a second wife hath issue another daughter both the daughters enter (where the eldest is only inheritable) and make partition, the eldest daughter is concluded during her life to impeach the partition, or to say that the youngest is not heire, and yet she is a stranger to the taile, but in respect of priuity in their persons the partition shall conclude, for a partition betweene meere strangers in that case is voide, but the issue of the eldest shall auoide this partition as issue in taile.

See after the Chapter of Garr.

(g) 21.E.3.34.35. 2.E2. Bastarde 19. 11.Ass.23. 30.Ass.7. 17.E.3.59.

(g) I.S. seised of Lands in fee hath issue two daughters, Rose and Anne, bastards eigne, and Mulier puisne and dieth. Rose and Anne doe enter and make partition. Anne and her heires are concluded for euer.

melieur en annual value, que est la part de lauter, coment q̄ els sont concludes durant lour vies a defeater la partitiō, vncore si le parcener q̄ ad le meinder part en value ad issue & deuy, lissue poit disagreer a la partition, & enter et occupier e cōmon lauter part que fuit alotte a sa Aunt, & issint lauter poit enter & occupier en common lauter part alotte a sa soer, &c. sicome nul partition vst este fait.

is better in yearly value then the part of the other, albeit they bee concluded during their liues to defeate the partition, yet if the parcener which hath the lesser part in value hath issue and die, the issue may disagree to the partition, and enter and occupie in common the other part which was alotted to his Aunt, and so the other may enter and occupie in cōmon the other part allotted to her sister, &c. as if no partition had beene made.

Section 256

CEls & lour barons. Here it appeareth that the wife must be partie to the partition, and so are the bookes* to be intended that speake of this matter.

(*) 42. Ass.22. 8.E.4.4. 9.E.3.38. 15.E.4.20. F.N.B 62. 29.Ass.23. 9.H.6.5. 43. Ass.14.

C*Et defeatera le partition.* Note the partition shall not be defeated for the surplusage only to make the partition equall, but here it appeareth that it shall be auoyded for the whole. But of this more shall be said hereafter in this chapter, Sectione 264. (h) And though the partition be vnequall, yet is not the partition voyde, but voydable, for if after the decease of the husband, the wife entreth into the vnequall part, and agreeth thereunto, this shall binde, and therefore Littleton

(h) Vid.2.E.2.Cui in vita 17.

CItem si deux parceners de tenemēts e fee preigne barons, et els et lour barons font partition enter eux, si la part lun est meinder en anual value q̄ la part lauter, durant les vies lour barons la partition estoyera en sa force. Mes coment que il estoyera durant les vies les barons, vncore apres la mort le baron, celuy feme q̄ ad le meinder part poit enter en le part sa soer

ALso if two parceners of lands in fee take husbands, and they and their husbands make partition betweene them, if the part of the one bee lesse in value then the part of the other during the liues of their husbands the partition shall stand in its force. But albeit it shal stand during the liues of their husbands, yet after the death of the husband, that woman which hath the lesser part may enter into

ſoer come eſt auantdit, et defeatera la partition.

her ſiſters part as is aforeſaid, and ſhall defeate the partition.

bleth the word (Defeatera) which proueth it to bee voydable.

Sect. 257.

¶ Mes ſi le partitiõ fait pentre les barons fuit tiel, que chescun part al temps dallotment fait, fuit de egall annuall value, donque il ne poit apres estre defeat en tiels cases.

BVt if the partition made betweene the husbands were thus, that each part at the time of the allotment made was of equall yearely value, then it cannot afterwards bee defeated in ſuch caſes.

¶ *Perenter les barons.* This is miſtaken, for the originall is Parenter eux, that is, betweene the Barons and Fems, and not, as it is here betweene the Barons, therefore this error would be hereafter reformed.

¶ *Al temps del allotment.* Hereby it appeareth, that if the parts at the time of the partition be of equal yearely value, neither the wiues nor their heires ſhall euer auoyde the ſame, and the reaſon hereof is, for that the huſbands and wiues were compellable by Law to make partition, and that which they are compellable to doe in this caſe by Law, they may doe by agreement without proceſs of Law. If the annuall value of the land be equall at the time of the partition and after become vnequall by any matter ſubſequent, as by ſurrounding, till huſbandrie or ſuch like, yet the partition remaines good.

9.H.6.5. And other the bookes aboueſaid.

Iudicis officium eſt vt res ita tempora rerum,
Quærere, quæſito tempore tutus eris.

But if the partition be made by force of the Kings writ, and iudgement thereof giuen, it ſhall binde the Fem-couerts for euer, albeit the parts be not of equall annuall value becauſe it is made by the Sheriffe by the oath of twelue men by Authority of Law. And the iudgement is that partition ſhall remaine firme and ſtable for euer as hath beene ſaid. (a) But a partition in the Chancery where one Copercener is of full age and ſueth Liuery, and one other is within age and hath an vnequall part allotted to her, this ſhal not binde her at full age, for in a writ directed to the Eſcheator to make partition there is a Salvo jure; And there is no iudgement vpon ſuch a partition. But if ſuch a partition be equall it ſhall binde, ſo that a part of the land holden In Capite be allotted to euery of the Coparceners, for to that end there is an expreſſe Prouiſo in the writ. (b) And this partition may bee auoyded either by Sc. fac' in the Chancery, or by a Writ De partitione facienda at the Common Law at her full age.

(a) F.N.B.256.259.260 261.262.263. 9.H.6.6. 21.E.3.31.

(b) *Vide* 21.E.3.31.

Sect.258.

¶ Item ſi deux parceners ſont, et le puiſne eſteant deins lage de 21. ans et partition eſt fait enter eux, iſſint que la purpartie que eſt allot al puiſne ẽ ỏ meindre value q̃ la purpartie lauter, en ceſt caſe le

ALſo if two Coparceners be, and the yongeſt beeing within the age of twenty one yeres, partition is made betweene them, ſo as the part which is allotted to the youngeſt, is of leſſe value than the part of the

¶ AS before in the caſe of the Fem-Couert, (c) ſo it is in the caſe of the Enfant, for if the partition be equall at the time of the allotment, it ſhall binde him for euer, becauſe he is cõpellable by Law to make partition, and he ſhall not haue his age in a Partitione faciendа,

(c) 43.Aſſ.14. 9.H.6.5.6. 7.E.3.13. 8.E.3.24. 10.H. 4.5.31. Aſſ.16. 21.H.6.25.

da, and though the partition be vnequal, and the Enfant hath the leſſer part, yet is not the partition voyd, but voidable by his entry, for if hee take the whole profits of the vnequal part, after his full age the partition is made good for euer. And therfore Littlet. here giueth him a caueat, That in that caſe he take not the whole profits of his vnequal part, neither ſhall an vnequall partition in the Chancerie bind an Infant as appeareth before. But a partition made by the Kings Writ de Partitione faciendâ, by the Sheriffe by the oath of twelue men, and iudgement therevpon giuen, ſhall bind the Enfant, though his part bee vnequall, Cauſa qua ſupra.

le puiſne durant l' tẽps de ſon nonage, et auxy quaunt el vient a plein age, ſ. de 21. ans, poit enter en la purpartie a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a ſa plein age, que el ne preigne a ſon vſe demeſne touts les profits des terres ou tenements que a luy fuẽ allots. Car donques el ſoy agreea a le partition a tiel age, en quel caſe la partition eſtoyera et demurra en ſa force: Mes peraduentuẽ les pfits d' la moitie el poit prender, relinquitant les profits d' lauter moitie a ſa ſoer.

other; in this caſe the youngeſt during the time of her nonage, and alſo when ſhee commeth to full age, s. of 21. yeares, may enter into the part allotted to her ſiſter, and ſhall defeat the partition: but let ſuch parcener take heed when ſhee comes to her full age, that ſhee taketh not to her owne vſe all the profits of the lands or tenements which were allotted vnto her, for then ſhee agrees to the partition at ſuch age, in which caſe the partition ſhall ſtand and remaine in it's force: but peraduenture ſhe may take the profits of the moitie, leauing the profits of the other moitie to her ſiſter.

Sect. 259.

¶ The Law hath prouided for the ſafty of a mans or womans eſtate, that * before their age of twentie one yeares they cannot bind themſelues by any Deed, nor alien any land, goods, or chattels.

*Vi. Sect. 403, 403.

¶ *Age de 21. ans.* Before this age a man or woman is called an Enfant.

Brit. fo. 65, 66. & 101. Flet. li. 3. ca. 14.

¶ *Fait.* Factum, Anglicè, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting on three things, viz. writing, Sealing, and Deliuerie, comprehending a bargaine or contract betweene partie and partie, man or woman. It is called of the Ciuilians, Literarum obligatio.

¶ *Feoffement.* Of this word ſufficient hath bin

¶ Et eſt aſcauoir que quant il ẽ dit, que males ou females ſont de pleine age, ceo ſerra entendue d' age de 21. ans, car ſi deuant tiel age, aſcun fait ou feoffement, grant, releaſe, confirmation, Obligation, ou auk ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Baylife ou receiuer a aſcun home, &c. tout ſerue pur nient, & poit eſte auoyde. Auxy

And it is to bee vnderſtood, that when it is ſayd, That males or females bee of full age, this ſhall be intended of the age of 21. yeares, for if before ſuch age, any deed or feoffement, graunt, releaſe, confirmation, Obligation, or other writing bee made by any of them, &c. or if any within ſuch age be Baylife or Receiuer to any man, &c. all ſerue for nothing, and may be auoyded. Al-

Jury home deuaunt le dit age, ne ſera myſure en vn Enqueſt, &c.

ſo a man before the ſayd age ſhall not bee ſworne in an Enqueſt,&c.

ſayd before in the firſt Chapter of the firſt booke.

¶ *Grant.* Conceſſio is in the Common law a conueyance of a thing that lies in grant, and not in Liuerie, which cannot paſſe without Deed, as Aduowſons, Seruices, Rents, Commons, Reuerſions, and ſuch like. Of this alſo ſufficient likewiſe hath beene ſayd in the firſt Chapter of the firſt booke. *Lib.3.fol.63.in Lincolne Colledge Caſe.*

¶ *Releaſe, Confirmation,&c.* **Of theſe ſhall be ſpoken hereafter in** their proper places and Chapters.

¶ *Obligation* **is a word of his owne nature of a large extent, but** it is commonly taken in the Common Law, for a Bond containing a penaltie with condition for payment of money, or to doe or ſuffer ſome act or thing, &c. and a Bill is moſt commonly taken for a ſingle Bond without condition.

¶ *Ou auter ſcripture ſoit fait per aſcun de eux,&c.* **Here by this** (&c.) is implied ſome exceptions out of this generalitie, (d) as an Infant may bind himſelfe to pay for his neceſſarie meat, drinke, apparell, neceſſarie phyſicke and ſuch other neceſſaries, and likewiſe for his good teaching or inſtruction, whereby he may profit himſelfe afterwards: but if he bind himſelfe in an Obligation or other writting, with a penaltie for the payment of any of theſe, that Obligation ſhall not bind him. (e) Alſo other things of neceſſitie ſhall bind them, as a preſentation to a Benefice, for otherwiſe the Laps ſhall incurre againſt him. Alſo if an Infant be an Executor vpon payment of any debt due to the Teſtator, hee may make an acquittance, but in that caſe a releaſe without payment is voyd, and generally whatſoeuer an Infant is bound to doe by Law, the ſame ſhall bind him, albeit he doth it without ſuit of Law. But of this common learning this little taſt ſhall ſuffice.

(d) 18.E.4.2. 21.H.6.31. *Lib.9.fol.87.Pinchons. Caſe.*

(e) 8.E.4.4. 9.H.6.5 17.E.3.9. 29. Aſſ.25. 2.Maria. Dier.104.105.

¶ *Baylife ou Receiuer al aſcun home,&c.* **By this** (&c.) **many things** are implied, as that by Baylike is vnderſtood a ſeruant that hath adminiſtration and charge of lands, goods, and Chattels, to make the beſt benefit for the owner, againſt whom an Action of Account doth lie for the profits which he hath raiſed or made, or might by his induſtrie or care haue reaſonably raiſed or made, his reaſonable charges and expences deducted (f) But one vnder the age of twentie one yeares ſhall not be charged in any ſuch account, becauſe by intendment of Law, before his full age he hath not ſkill and abilitie to raiſe or make any ſuch improuement and profit.

Fleta lib.2.cap.64.& cap.67 Britton fol.62.70. Fleta Lib.2.cap.64. 41.E.3 39. 46.E.3. Account 40. 2.R.2.ibidem 45. 6.R.2 ibid.3.E.3.10.

(f) 13.E.3.Infant 9.17.E.2. Account 121. 21 E.3.8. 10.H.4.14. 2.H.4.13. Regiſt.135.

In account againſt a Receiuer, is when one receiueth money to the vſe of another, to render an account, but vpon his account he ſhall be allowed his expences and charges. (g) And therefore a man cannot charge a Baylife as a Receiuer, becauſe then the Baylife ſhould loſe his expences and charges.

(g) 43.E.3.31. 46.E.3.3.b. 4.H.6.27.

In an account againſt a Receiuer, the Plaintife muſt declare by whoſe hands the Defendant receiued the money, which he ſhall not doe in the caſe of a Baylife. (h) But in ſome caſe in an Action of Account againſt one as Receptor denariorum, hee ſhall haue allowance of his expences and charges, and alſo ſhall account for the profit he receiued, or might reaſonably receiue, and this was prouided by Law in fauour of Merchants, and for aduancement of trade and traffique.

(h) 30.E.1. Account 127. 47.E.3 22. 10.H.7.16. Bract.li.5. fo.334.Brit.f.62. Fle.li.2.c.64.& 51.5 E.3.1. Lib.Intrat.17,18,19.

Is if two ioynt Merchants occupie their ſtocke, goods, and merchandizes in common to their common profit, one of them naming himſelfe a Merchant, ſhall haue an account againſt the other naming him a Merchant, and ſhall charge him as Receptor denariorum ipſius B. ex quacunque cauſa & contractu ad communem vtilitatem ipſorum A. & B. prouenien' ſicut per legem mercatoriam rationabiliter monſtrare poterit.

(i) If there be two Joyntenants or Tenants in Common of lands, and the one make the other his Bailife of his mottie, he ſhall haue an Action of Account againſt him as Baylife: And ſo are the Bookes to be intended, that ſpeake of an Action of Account in that caſe.

(i) 45.E.3.10. 3.E.3.27. 39.E.3.27.47.E.3.22. F.N.B.118.

So as there be but three kinds of writs of Account, viz. againſt one as Gardeine, whereof Littleton hath ſpoken before in the Chapter of Socage. The ſecond againſt one as Baylife: And the third, as Receiuer, as here it appeareth. (k) For a man ſhall not bee charged in an Account as Surueyor, Controller, Apprentice, Reue, or Heyward. And to maintaine an Action of Account, there muſt be either a priuitie in deed by the conſent of the partie, for (l) againſt a Diſſeiſor or other wrong doer no account doth lie, or a priuitie in Law ex prouiſione legis, made by the Law, as againſt a Gardein, &c. whereof ſufficient hath been ſpoken in the Chapter of Socage.

(k) 13.E.3.Account 76. 41.E.3.ibidem 34. 8.E.3.46. 8.E.4.6.b. F.N.B.119.d.

(l) 2. Mar.B. Account 89. F.N.B.117. Pl.Com 542 2.H.4.12. 33.H.6.2. 4.H.7.6.&c.

¶ Ne

(m) Bracton lib.5. fo 340.b.
(n) 13.E.3. Ley 50.
(o) 26.E.3.63. 2. Maria Dier 164.165.
(p) Vid. denuus Cap. de Homage et Cap. de Fealtie Sect. 85.91. Bract lib.2. fo.124. Britton fo.73.74. et fol.19. Fleta lib.1.cap.27.
(q) 11.H6.40. 1.H.7.25. 15.E.4.2.
(r) 46.E.3.19. 9.E.4.24. 15.E.4.2. 21.H.3.23.

¶ *Ne serra iure en vn Enqueſt, &c.* By this (&c.) is implied a maxime in Law, (m) Quod minor iurare non poteſt. For example, (n) An Infant cannot make his Law of Non ſummons: (o) And therefore the default ſhall not grieue him, for ſeeing the meane to excuſe the default is taken away by Law, the default it ſelfe ſhall not preiudice him. But yet this rule hath an exception, That (p) an Infant when hee is of the age of twelue yeares, ſhall take the Oath of Allegeance to the King: and this was, as Bracton ſaith, Secundum leges Sancti Edwardi. But indeed ſuch was the Law in the time of King Arthur, (q) An Infant cannot vpon his oath make his law in an Action of Debt. (r) And the husband and wife of full age for the debt of the wife, before the couerture ſhall make their Law.

Section 260.

¶ *A terre en fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerued vpon this whole caſe, That the fee ſimple Land is allotted to the yongeſt daughter, and the land entailed to the eldeſt. This partition Prima facie is good, and herein the partition differeth from the eſchange where in the eſchange the eſtates muſt bee equall.

But yet this partition by matter ſubſequent may become voidable, (as Littleton here putteth the caſe) the eldeſt Coparcener hath by the partition, and the matter ſubſequent barred her ſelfe of her right in the fee ſimple lands, inſomuch as when the youngeſt ſiſter alieneth the fee ſimple Lands and dieth, and her Iſſue entreth into halfe the lands entailed, yet ſhall not the eldeſt enter into halfe of the lands in Fee ſimple vpon the Alienee, for by the alienation, the priuitie of the ſtate is deſtroyed.

¶ *Le puiſne file alien la terre en fee ſimple, &c.* The ſame Law it is, if the youngeſt daugh-

¶ Item ſi terres ou Tenemẽts ſoyent dones a vn home en le taile, quel ad tant des terres en fee ſimple, et ad iſſue deux files, et deuie, & ſes deux files font partition entr eux, iſſint que la terre en fee ſimple eſt allot a le file puiſne en allowance des terres & tenements tailes allottes a le file eigne, ſi apres tiel partition fait, la puiſne file alienaſt ſa terre en fee ſimple a vn auter en fee, & ad iſſue fits ou file & deuie, liſſue poit bien entrer en les Tenemẽts tailes & eux tener & occupier en purpartie ouesque ſon Aunt. Et ceo eſt pur deux cauſes: vn eſt, pur ceo que liſſue ne poit auer aſcun remedie de la terre alien p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt vn de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt reaſon

ALſo if Lands or Tenements be giuen to a man in taile, who hath as much land in fee ſimple, and hath iſſue two daughters and die, & his two daughters make partition betweene them, ſo as the Land in Fee-ſimple is allotted to the younger daughter, in allowance for the lands and Tenements in Taile allotted to the elder daughter, if after ſuch partition made, the yonger daughter alieneth her land in fee ſimple, to another in fee, & hath iſſue a ſon or a daughter & dies, the iſſue may wel enter into the lãds in taile & hold and occupie them in purpartie with her aunt. And this is for two cauſes: one is, for that the iſſue can haue no remedie for the land ſold by the mother, becauſe the land was to her in fee ſimple, and in as much as ſhe is one of the heirs in taile, & hath no recõpence of that which belongeth to her of the lands in taile, it is reaſon

reason que el eit la purparty ô les tenãts tailes, & nosinement quant tiel partition ne fait aleun discontinuance.

¶ Mes le contrary est tenus M.10.H.6.5. que le heire ne poit enter sur l'Parcener que ad la terre taile, mes est mis a Formdon.*

that shee hath her portion of the Lands tayled, and namely when such partition doth not not make any discontinuance.

¶ But the contrary is holden *M.10.H.6.* 5. that the heire may not enter vpon the parcener who hath the intailed land, but is put to a *Formedon.** ter had made a gift in tayle, for the Reuersion expectant vpon an estate tayle is of no account in Law, for that it may bee cut off by the tenant in tayle. Otherwise it is of an estate for life or yeares. If in this case the youngest Daughter alien part of the Land in Fee simple, and dieth so as a full recompence for the land entayled discends not to her issue, shee may waiue the taking of any profits thereof and enter into the Land entayled for the Issue in tayle shall neuer bee barred without a full recompence, though there bee a warrantie in Deed, or in Law discended. If on the other side the eldest Coparcener alien the land entayled and dyeth, her Issue shall haue a Formdon alone for the whole Land entayled, for so long as the partition continueth in force, she is only enheritable to the whole Land entayled.

¶ *Et nad my ascun recompence.* This is intended, as it appeareth of a full recompence.

¶ *Tiel partition ne fait ascun discontinuance.* And the reason thereof is for that it passeth not by Liuery of seisin, but the partition is in truth lesse then a grant, for that it maketh no degree but each Coparcener is in by discent from the common Ancestor.

See more of this in the Chapter of discontinuance. Sect. .

¶ *Mes le contrary est tenus, &c.* This is no part of Littleton, and is contrary to Law as appeareth by Littleton himselfe, and besides the case intended is not truly vouched, for it is not in 10.H.6. but in 20.H.6. and yet there it is but the opinion of Newton, Obiter, by the way. Vide F. tit. part. 1.

20.H.6.14.

Section 261.

Vn auter cause ẽ, pur ceo q̃ il serra tenũ la folly del eigne foer que el voit suffer ou agree a tiel partition, ou el puisoit auer si el voile, la moitie de la terre en fee simple, & son moitie des tenemẽts en le taile, pur say pur party, & issint estre sure sans dammage.

A Nother reason is for that, it shall be accounted the folly of the eldest sister that shee would suffer or agree to such a partition, where she might if shee would haue had the moity of the Land in Fee Simple, and a moity of Lands entailed for her part, & so to be sure without losse.

¶ *Vn auter cause, &c.* This is another reason to proue that by the partition the eldest Daughter hath concluded her selfe as is aforesaid.

¶ *Son moitie des terres en le tayle.* For if a Writ of Partition had beene brought, the eldest should not haue bin cõpelled to take the whole estate in tayle, for the prejudice that might after ensue, but might haue challenged the one moity of the Lands in Tayle, and another moity of the Lands in Fee simple, and this she might doe ex prouisione legis. But when shee will not submit her to the policie and prouision of the Law, but betake herselfe to her owne policie and prouision, there the Law will not ayde her, as hers by Littleton it manifestly appeareth. And so it is in the other case. (*) As if a man be seised of three Mannors of equall value in fee & taketh wife, and chargeth one of the Mannors with a Rent Charge, and dyeth, she may by the prouision of the Law take a third part of all the Mannors and hold them discharged, but if shee will accept the entire Mannor charged, it is holden that she shall hold it charged.

(*) 26.E.3. *drow* 233. 17.E.2. *tit. drow* 164. 18.H.6.27.

Dier.1.Mar.98.

A partition of Lands intayled betweene Parceners, if it be equall at the time of the partition shall bind the issues in tayle for ever, albeit the one doe alien her part.

But here it may be demanded, that seeing Littleton sayth, that it shall bee taken to bee the folly of the eldest Parcener, &c. what if so be the eldest did not know of the estate tayle either in respect of the antiquitie thereof, or for want of having of the evidence, or for any other cause, what folly can be imputed to her?

The answer is, That it is presumed in Law, that every one is Constant of her right and title to her owne Land; and on the other side it should be arrected great folly in her to be ignorant of her owne title. And therefore the reason of Littleton doth firmely hold.

Section 262.

BEfore it appeareth that when the priuitie of the estate is destroyed by the feoffment of one Coparcener, that vpon euiction of a moity by force of an entayle against the other shee shall not enter vpon the alienee. But in this case that Littleton here putteth when the priuity of the state remayneth, and the part of the one is euicted, (*) shee shall enter and hold in Coparcenarie with her other Coparcener, and so it is in the case of an eschange. By reason of the (&c.) in the end of this Section there may two questions bee iustly demanded; what if the whole estate in part of the purpartie of one Parcener be euicted by a title paramont? whether is the whole partition auoyded, for that Littleton here putteth the case that the whole purpartie of the one is defeated?

The second question is whether if but part of the state of one Coparcener bee euicted, as an estate in tayle, or for life leauing a reuersion in the Coparcener, whether that shall auoyde the partition in the whole?

To the first it is answered, that if the whole estate in part of the purparty bee euicted, that shall auoid the partition in the whole, be it of a Mannor, that is entire, or of acres of ground, or the like that bee seuerall, (n) for the partition in that case implyeth for this this purpose both a warranty and a condition in Law, and either of them is entire, and giueth an entry in this case into the whole. And so hath

(*) 15.E.4.3.a.per Littleton. Lib.4.fol.121.122. Bastards Case.

(n) 13.E.4.3. 42. Ass.22.

CAr vy si home soit seisie en fee dun carue de terre per iust title, & disseisist vn enfãt deins age dun auter carue, & ad issue deux files, & morust seisi daun-dit deux carues, lenf. adonq; esteant deins age, & les files entront & font partition, issint q̃ lun carue est allotte al purparty lun, come per case al puisne en allowãce dauter carue que est allotte a le purpartie de lauter, si puis lenf. enter en le carue dont il fuit disseisist sur l'possession la Parcener que ad mesme le carue, donq; m̃ le Parcener poit entrer en lauter carue que sa soer ad, & tener en Parcenary ouesq; luy: Mes si le puisne aliena m̃ la carue a vn auter en fee simple deuant lentrie lenf. & puis lenf. enter sur le possession lalienee, donque

ALso if a man bee seised in fee of a carue of Land by iust title, and hee disseise an Infant within age, of an other Carue, and hath issue two Daughters, and dieth seised of both Carues, the Infant being th̃e within age, and the daughters enter and make partition, so as the one Carue is alloted for the part of the one, (as per case to the youngest in allowance of the other carue which is allotted to the purpartie of the other, if afterward the Infant enter into the Carue whereof hee was disseised vpon the possession of the Parcener which hath the same Carue, then the same Parcener may enter into the other Carue which her Sister hath, and hold in Parcenarie with her. But if the yongest alien the same Carue to another in fee before the entry of

que el ne poit enter en lauter Carue, pur ceo que per son alienation el ad luy tout ousterment dismisse dauer ascun pt de les tenements cõe Parcener. Mes si le puisne deuant lentrie lenfant fait de ceo vn leas pur terme dans, ou pur terme de vie, ou en fee tayle, sauant la reuersion a luy, & puis lenfant enter, la parauenture auterment est, pur ceo que el ne soy ceo que fuit en luy, dismisse de tout mes ad reserue a luy le Reuersion & le fee, &c.

the Infant, and after the Infant enter vpon the possession of the Alienee, then she cannot enter into the other Carue, because by her alienation shee hath altogether dismissed her self to haue any part of the Tenements as Parcener. But if the youngest before the entrie of the Infant make a Lease of this for terme of yeares, or for tearme of life, or in Fee Tayle sauing the reuersion to her, and after the Infant enter there peraduenture otherwise it is, because she hath not dismissed herselfe of all which was in her, but hath reserued to her the reuersion, & the fee, &c.

it been lately resolued (o) both in the case of exchange and of the partition.

(o) *Bastards case. Lib. 4. fol. 121.*

To the second, if any estate of freehold be euicted from the Coparcener in all or part of her purpartie, it shall be auoyded in the whole. As if A. be seised in fee of one acre of land in possession, and of the reuersion of another expectant vpon an estate for life and hee disseise the Lessee for life who makes continuall clayme. A. dyeth seised of both Acres, and hath Issue two Daughters, partition is made, so as the one Acre is alloted to the one, and the other Acre to the other, the Lessees enter, the partition is auoyded for the whole, and so likewise hath (p) it been lately resolued. (q) Yet there is a diuersitie betweene the warrantie, and the condition which the Law createth vpon the partition where one Coparcener taketh benefit of the condition in Law she defeateth the partition in the whole.

(p) *Bastards case, vbi supra.*
(q) *Vide 5. E. 3. tit. voucher, 249.*

But when she voucheth by force of the warranty in Law for part, the partition shall not be defeated in the whole, but shee shall recouer recompence for that part. And therein also there is another diuersitie betweene a recouerie in value by force of the warrantie vpon the eschange and vpon the partition: for vpon the eschange he shall recouer a full recompence for all that he loseth, But vpon the partition she shall recouer but the moitie or halfe of that which is lost, to the end that the losse may be equall.

Many other diuersities there be betweene eschanges and partitions, for there are more and greater priuities in case of partition in persons, bloud, and estates, than there is in eschanges, all which were too tedious to rehearse in this place, seeing so much as hath been said, herein is sufficient for the explanation of the cases of partition which Littleton hath put.

18. E. 3. tit. aid 171. 19 H. 6. 26.

¶ *Donques el ne poet enter en lauter carue, &c.* By this is also approued that which hath been often said before, that when the whole priuitie betweene Coparceners is destroyed, there ceaseth any recompence to bee expected eyther vpon the condition in Law or warrantie in Law by force of the partition.

¶ *Per son alienation il ad luy tout ousterment dismisse dauer ascun part de les tenements come parcener.* Hereupon it followeth, that if one Parcener maketh a feoffement in Fee, and after her feoffee is impleaded and voucheth the Feoffor, (r) she may haue ayde of her Coparcener to deraigne a warrantie Paramount, but neuer to recouer pro rata against her by force of the warrantie in Law vpon the partition, for Littleton here sayth, that by her alienation shee hath dismissed herselfe to haue any part of the Land as Parcener. And without question as Parcener shee must recouer pro rata, vpon the warrantie in Law against the other Parcener.

(r) *41. E. 3. 24. 11. H. 4. 22. 23. 14. E. 3. aid 24.*

And yet in some case the Feoffee of one Coparcener shall haue ayde of the other Parceners to Deraigne the Warranty paramount, and therefore (a) if there bee two Coparceners and ther make partition, and the one of them enfeoffes her sonne and heire apparant and dyeth the sonne is impleaded, albeit he be in by the feoffment of his mother, yet shall he pray in ayde of

(a) *43. E. 3. 23. Pl. com. 4. E. 3. 15. 5. E. 3. 7. 38. E. 3. 17. &c.*

(b) 32 E.1.tit. Aid 178. 3.E.2 ibid.163.

the other Coparcener to haue the warranty Paramount; and the reason (b) of the granting of this aide is for that the warranty betweene the mother and the sonne is by law annulled, and therefore the Law giueth the sonne albeit he be in by feoffment to pray in aide of the other parcener, to deraigne the Warranty Paramount, wherein is to be obserued the great equity of the Common Law in this case:

Ipsæ etenim leges cupiunt vt iure regantur.

(*) 2.H.6.16.

(*) But if a man be seised of lands in fee and hath issue two daughters and make a gift in taile to one of them and die seised of the reuersion in fee which discends to both sisters, and the Donee or her issue is impleaded, she shall not pray in ayde of the other Coparcener either to recouer Pro rata, or to Deraigne the Warranty Paramount, for that the other sister, is a stranger to the state taile whereof the eldest was sole Tenant, and neuer partition was or could be thereof made.

¶ *Mes si le puisne deuant lentrie lenfant fait de ceo vn lease, &c. ou en fee taile sauant le reuersion a luy, &c.* This (vpon that which hath beene said) needeth no explanation. Only this is to be obserued, that albeit it is in the power of tenant in taile to cut off the reuersion, yet if the infant enter before it be cut off, the Law hath such consideration of this reuersion, that shee that loseth it shall enter into her sisters part, and hold with her in Coparcenary for that the priuity betweene them was not wholly destroyed.

Sect. 263.

¶ Item si soiēt trois ou quater parceners, &c. q̄ font partition enter eux, si le part dun parcener soit defeat p̄ tiel loyal entrie, el poit enter et occupier laut̄ terres ouesq̄ touts les auters parceners, et eux compell̄ de faire nouel partition de lauters terres, enter eux, &c.

ALso if there be three or foure Coparceners, &c. which make partition betweene them, if the part of the one parcener bee defeated by such lawfull entrie, she may enter and occupie the other lands with all the other parceners, and compell them to make new partition betweene them of the other lands, &c.

¶ *Nier eux, &c.* This (&c.) implyeth that so it is betweene the surviuing Parceners and the heires of the other, or betweene the heires of Parceners all being dead.

Sect. 264.

¶ *Le baron soy tient eins cōe tenant per le curtesie.* This is no seuerance of the state in Coparcenary, (b) for the other Coparcener and the Tenant by the Curtesie shall be joyntly impleaded, for he doth continue the state of Coparcenary as the other Parcener did.

(b) 24.E.3.29.31.E.3.Brief 339. 9.E.4.13. 19.H.6.26. 3.H.6.Aff.1. 37.H.6.8. 21.E.3.14.

¶ *Vers le tenant*

¶ Item si sont deux parceners, et lun p̄nt baron, et le baron et la fem̄ ont issue enter eux, et la feme deuy, et la baron soy tient eyns en le moity com̄ tenant per le curtesie, en ceo cas le parcener q̄ survesquist, et le tenant per le curtesie bien poient faire partition

ALso if there bee two parceners and the one taketh husband and the husband and wife haue issue betweene them and his wife dieth, and the husband keepes himselfe in as tenant by the curtesie, In this case the parcener which surui-

tition enter eux, &c. Et ſi le tenant per le curteſie ne voit agreer al partition deſtre fait, donques le parcener que ſuruesquiſt poit auer enuers le Tenant per le curteſie, breife De partitione facienda, &c. et luy cõpeller de faire partition. Mes ſi le tenant per le curteſie voile auer partition enter eux deſtre fait, et le parcener que ſuruesquiſt ne voit ceo auer, donque le tenant per le curteſie nauera aſcũ remedy pur auer partition, &c. Car il ne poit auer breife de Partitione facienda, pur ceo que il neſt parcener, car tiel breife giſt pur parceners tantſolement. Et iſſint poyes veyer que bre de Partitione facienda giſt enuers tenant per le curteſie, et vncore il meſme ne poit auer tiel breife.

ueth, and the tenant by the curteſie may well make partitiõ between them, &c. And if the tenant by the curteſie will not agree to make partition then the parcener which ſuruiueth may haue againſt the tenant by the curteſie a Writ *De partitione facienda, &c.* & compel him to make partition. But if the tenant by the curteſie would haue partition to be made between them and the parcener which ſuruiueth will not haue this, then the tenant by the curteſie cãnot haue any remedy to haue partition, &c. For hee cannot haue a writ of *Partitione faciẽda*, becauſe he is no parcener. For ſuch a Writ lyeth for parceners only. And ſo you may ſee that a writ of *Partitione fac'* lyeth againſt tenant by the curteſie, and yet he himſelfe cannot haue the like Writ.

per le Curteſie briefe de partitione facienda, &c. Here by the &c. is implyed that albeit that the Tenant by the Curteſie be an eſtranger in blood yet the (c) Writ De partitione fac. clearly lyeth againſt the tenant by the Curteſie, becauſe hee continueth the eſtate of Coparcenary.

(c) 3.E.3.47. 9.E.3.13. 16.E.3.Ind 129. 19.E.3. ibid.144.

If two Coparceners be, and one doth alien in fee they are Tenants in common, and ſeuerall Writs of Præcipe muſt be brought againſt them, and yet the Parcener ſhall haue a Writ of partition againſt the Alienee at the Cõmon Law, which is a farre ſtronger caſe then the caſe put of Tenant by the Curteſie. 28,E.3.5

¶ *Tiel briefe giſt pur Parceners tantſolement.* Here by it appeareth that neither the Tenant by the Curteſie, nor (much leſſe) the Alienee of a Coparcener ſhall haue a Writ of Partitione fac' at the Common Law, for Littleton ſaith here, that ſuch a Writ lyeth only for Parceners, but it may be brought by a Parcener againſt ſtrangers as it appeareth before. But a Nuper obijt and a Rationabile parte doe lye only betweene two Coparcener on both ſides. (*) 3.E.47.48.

If three Coparceners be and the eldeſt doth purchaſe the part of the youngeſt, the eldeſt hauing one part by diſcent, and the other by purchaſe ſhall haue a Writ of Partition at the Common Law againſt the other middle ſiſter; Et ſic de ſimilibus. And ſo it is in a farre ſtronger caſe, if there be three Coparceners and the eldeſt taketh husband, and the husband purchaſeth part of the youngeſt the husband for his part is a ſtranger and no Parcener, and yet he and his wife ſhall haue a Writ of partition againſt the middle ſiſter at the Common Law, becauſe he is ſeiſed of one part in the right of his wife who is a Parcener. Dier 1.Maria 98. F.N.B.52. Regiſt.

¶ *Pur auer Partition, &c.* Here by this (&c) is included all others that be ſtrangers in blood, whether they come to their eſtates by Purchaſe or by act in Lawe. Since Littleton wrote; by the Statutes (d) one Joyntenant or Tenant in common, may haue a Writ of Partition againſt the other, and therefore at this day the Alienee of one Parcener may haue a Writ of Partition againſt the other Parcener, becauſe they are Tenants in common: and the like had beene attempted in former Parliaments (*) but preuailed not vntill theſe later Statutes. (d) 31.H.8.cap.1. 32.H.8. cap.32. Vid.Sect.290. (*) Rot.Parl.1.R.2 nu.82.

(e) The Tenant by the Curteſie ſhall haue a Writ of Partition vpon the Statute of 32.H.8. (e) Brooke tit.Partition 41.

32.H.8.ca.32. for albeit he is neither Joyntenant nor Tenant in Common, for that a Præcipe lieth against the Parcener and Tenant by the Courtesie as hath beene sayd, yet hee is in equall mischiefe as another Tenant for life.

(f) If there be three Coparceners and a stranger purchase the part of one of them, he and one other of the Coparceners shall not joyne in a Writ of partition, neither by the Common Law, nor by force of the statute, for the words of the Preamble of the statute be (And none of them by the Law doth or may know their seuerall parts, &c. and cannot by the lawes of this Realme make partition thereof, without other of their mutuall assents, &c.)

(f) *Mich.7. et 8. Eliz. Bendloes inter Wootton et Corke. Dier 3. Maria 128.A. et 7.Eliz.243.*

Now in this case the one of the Plaintifes, viz. the Parcener may haue a Writ of Partition at the Common Law, and the other Parcener being a purchaser may haue it by th. stat. and therefore they shall not joyne in one Writ.

CHAP.2. Parceners by Custome. Sect.265.

¶ *MEs il couient en le Declaration de faire mention de le custome.* Wel said Litl. (g) That he in his Declaration must make mention of the Custome, as to say, That the land is of the Custome of Gauelkind, but hee shall not prescribe in it. And so is it of Burgh English, and these two varie in that point from other Customes, for the Law, when they are generally alledged, taketh knowledge of these two.

See before all the Auntient Authours of the Law concerning Gauelkind vbi supra. Lambert verbo Terra excerpt

(g) *5.E.4.8.b. 21.E.4.56.b Plo. Com 129.b.in Buckleys Case. Vi. Sect. 8. ve sus fueru.*

In (h) Domesday it is thus sayd, Duo fratres tenuerunt in paragio quisque habuit aulam suam, & potuerint ire quo voluerint.

(h) *Berocieſcire. Hereford.*

¶ *Auxy tiel custome est en auters lieux Angleterre.* Of this sufficient hath beene said before.

¶ *North Gales.* Wales, Wallia, It commeth (i) of the Saxon word Wealh which signifieth Peregrinus, or exter°, for the Saxõs so called them, because in troth they were strangers to them, being the remaine of the old and antient Brittons, a wise and warlike Nation inhabiting in the west part of England. These men haue kept their proper Language for aboue these thousand yeares past, and they to this day call vs Englishmen, Saisons, (that is) Sarons. And the like custome as our Author heere saith was in North wales, was also in Ireland, for there the Lands also (which is one marke of the antient Brittons) were of the nature of Gauelkind: but where by their Brehon Law the Bastards

(i) *Lamb. verbo Welſemen. Silueſter Giraldus.*

¶ PArceners by the Custome are, where a man is seised in Fee simple, or in Fee tayle of Lands or Tenements which are of the Tenure called Gauelkind within the Countie of Kent, and hath issue diuers sonnes and die, such Lands or Tenements shall discend to all the sons by the Custome, and shal equally inherit and make partition by the custome, as females shall doe, and a writ of Partition lieth in this case as between females, but it behoueth in the Declaration to make mention of the Custome. Also such Custome is in other places of England, and also such custome is in North-Wales, &c.

¶ *PArceners ꝑ le custome sont lou hõe seisie en fee simple, ou en fee taile de terres ou tenements q̃ sont de tenure appel Gauelkind deins l' Coũtie de Kent, & ad issue diuers fits & deuie, tielx terres ou tenements discenderõt a touts les fits per le custome, & ouelment enheriterõt & ferront ptition enter eux per le custome, sicome females ferront, & bre de* Partitione facienda *gist en ceo cas, sicome enter females, mes il couient en la declaration de faire mention d' le custom. Auxy tiel custome est en auters lieux Dengleterr̃. Et auxi tiel custome est en North Gales, &c.*

ta rds inherited with their legitimate sons, as to the Walsh: that custome was abolished. And agreeing with Littleton in this point, by an old Statute.* Aliter visitatum est in Wallia, quam in Anglia, quo ad successionem hæreditaris, eo quod hæreditas partibilis est inter hæredes masculos, à tempore cuius non extitit memoria partibilis extitit, Dominus Rex non vult quod consuetudo illa abrogetur, sed quod hæreditates remanent partibiles inter consimiles hæredes sicut fieri consuevit, & fiat partitio illius sicut fieri consuevit

Vid. Sect. 213.
* *Stat. Wallia, ca. 12 §. 1.*

¶ *Parceners per le Custome, &c.* Well sayd Littleton, By the Custome, for sonnes are Parceners in respect of the custome of the Fee or Inheritance, and not in respect of their persons, as daughters and sisters, &c. be. (h) Et sunt participes quasi partem capientes, &c. ratione ipsius rei quæ partibilis est, & non ratione personarum, quæ non sunt quasi vnus hæres, & vnum corpus, sed diuersi hæredes, vbi tenementum partibile est inter plures cohæredes petentes qui discendunt de eodem stipite & semper solent diuidi ab antiquo.

(h) *Bract. li. 5. fo. 428. Brit. ca. 71. Flet. lib. 5. cap. 9.*

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¶ Item il y ad auter partic̃ quel est dauter nature et dauter forme que ascuns des partitions auaundits sont. Sicome home seisie de certaine Terres ẽ fee simple, ad issue deux filles et leigne est mary, et le piere done parcel de ses terres a le baron oue sa file en frankmariage, et morust seisie d le remnant, le quel remnant est de pluis greinder value per an, q̃ sont les Terres dones en frankmariage.

ALso there is another partition which is of another nature, and of other forme, then any of the partitions aforesaid be. As if a man seised of certaine Lands in Fee-simple, hath issue two daughters, and the eldest is married, and the father giueth part of his Lands to the husband with his daughter in Frankmarriage, and dieth seised of the remnant, the which remnant is of a greater yerely value than the lands giuen in Franke-marriage.

¶ *Done parcel de ses terres a le Baron oue sa file en frankmarriage.*

Here it appeareth, That a gift in frankmarriage may be made after marriage, as hath beene sayd in the Chapter of Fee tayle.

¶ *Le quel rẽnant est de pluis greinder value per an, &c.* Admit that the lands giuen in Frankmarriage are of greater valus than the lands discended in Fee simple, shall the other sister haue any remedie against the Doners? it is plaine she shall not, because it is lawfull for a man to dispose of his owne lands, at his will and pleasure.

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¶ En cel case le baron ne le fẽe auera riens pur lour purpartie de le dit remnant, sinon que ils voile mitter lour tres dones en frankmariage en Hotchpot ouesque le rem-

IN this case neither the husband nor wife shall haue any thing, for their purpartie of the sayd Remnant, vnlesse they wil put their lands giuen in Franke-marriage, in *Hotchpot*, with the remant of the

¶ *En cel case le Baron ne le Feme auera riens pur lour purpartie, &c.* (i) This gift in Frankmarriage shall Prima facie be intended a sufficient aduancement, and therfore the remnant shall discend to the other Coparcener, only with this proviso in Law, Tacite annexed, that if the doners

(i) *8. H. 3. brene 880. 34. E. 1. mayer Obit 15. admidge 4. E. 3. 49. 10. Ass p. 14. Vid. 10. E. 3. 38. et 30. Ass. 7 Bract. Lib. 2. fol 77. Lib. 5. fol. 428. Britton ca. 72 Flets Lib. 6. cap. 47.*

nees will put the Land into Hotchpot, then she shall out of the remant make vp her part equall, but the Donees must doe the first act, and in the meane time the whole fee simple land discends to the other. And this is warranted heere by Littleton, viz. That the Donees shall haue nothing for the purpartie of the remnant, vnlesse they will put their lands giuen in Franke-marriage, in Hotchpot, so as the Donees must doe the first act, and more expressely after in this Chapter, where he directly saith, That the other Sister shall enter into the remnant, & them to occupie to her owne vse, vnlesse the husband and wife will put the Lands giuen in Frankemarriage, into Hotchpot. And herewith agreeth Fleta, who saith, Cum dicat tenens excipiendo, quod non tenetur petenti respondere quia A. participem habet, &c. replicari poterit a petente quod prædict A. tenet quandam partem in maritagium de communi hæredit, nec vult illud in partem ponere. And here are three things (that I may speake once for all) to be obserued. First, That in this speciall case where there be two daughters, one of them onely shall inherit the lands in fee simple. Secondly, That in this case there lieth no writ of Partition, because non tenent insimul & pro indiuiso. Thirdly, If the Parcener to whom the land in fee simple discended, will not put the lands in Hotchpot, then may the Donees enter into the fee simple lands, and hold them in Coparcenarie with her.

nant de la terre ouesq; sa soer. Et si illint ils ne voilent fayre, donq̃s le puisne poet tener & occupier ẽ le remnanc, & prendra a luy les profits tãt solement. Et il semble que cest parol (Hotchpot) **est en Englisb,** A Pudding, **car en tiel** Pudding **nest communement mise vn chose tant solemẽt, mes vn chose ouesq; autres choses ensemble. Et pur ceo il couient en tiel case de mitter les Terres dones en frankmarriag̃, ouesque les autres terres en** Hotchpot, **si le Baron & la feme voilent auer ascũ pt en les autres tẽs.**

land with her sister. And if they wil not doe so, then the youngest may hold and occupie the same remnant, and take the profits onely to her selfe. And it seemeth that this word *(Hotchpot)* is in English, A Pudding, for in this Pudding is not commonly put one thing alone, but one thing with other things together. And therefore it behooueth in this case to put the lands giuen in Frankemarriage with the other Lands in *Hotchpot*, if the husband and wife will haue any part in the other Lands.

(k) *Glanuill Lib.7. cap.5. Bracton Lib.2.fol.60. Fleta Lib.2.cap.5. Magna Carta cap.18.3. F.N.B.222.30.E.3.25. 31.E.3.Resp.60. 31.Ass.14. 17.E.2.Detinew 17.E.3.17. 1.E.2.Detinew 56. 31.H.8.tit. Rationab.parte. Bonorum.6.*

* *Lamb.f.119.68.*

(l) *Regist.142. 34 E.1. Detinew 60. 1 E.4.6. 7.E.4.21. 43.E.3.38.*

(m) *3.E.3.Detinew. 156. 40.E.3.18.*

And it seemeth by our old Bookes, (k) That by the antient Law there was a kind of resemblance hereof concerning goods. Si autem post debita deducta & post deductionem expensarum quæ necessariæ erunt, id totum quod hunc superfuerit diuidatur in tres partes, quarum vna pars relinquatur pueris si pueros habuerit defunctus. Secunda, Vxori si superstes fuerit, & de tertia parte habeat testator liberam disponendi facultatem: si autem liberos non habeat, tunc medietas defuncto, & alia medietas vxori: si autem sine vxore decesserit liberis existentibus, tunc medietas defuncto, & alia medietas liberis tribuatur: si autem sine vxore & liberis, tunc id totũ defuncto remanebit. And by the Law before the Conquest it * was thus prouided, Siue quis in curia, siue morte repentine fuer intestat̃ mortuus, dominus tamen nullam rerum suarum partem (praeter eam quæ iure debetur) herioti nomine sibi assumito, verum eas iudicio suo vxori liberis & cognatione proximis iustè pro suo cuique iure distribuito.

But it appeareth by the Register, (l) and many of our Bookes, That there must be a custome alledged in some Countie, &c. to inable the wife or children to the writ De rationabile parte bonorum, and so hath it beene resolued in Parliament. (m) But such children as be reasonably aduanced by the father in his life time with any part of his goods, shall haue no further part of his goods, for the words of the writ be, Nec in vita patris promoti fuerunt.

Note, the custome of London is, That if the father aduance any of his children with any part of his goods, that shall barre them to demand any further part, vnlesse the father vnder his hand, or in his last will doe expresse and declare, That it was but in part of aduancement, and then that child so partly aduanced, shall put his part in Hotchpot, with the Executors and Widow, and haue a full third part of the whole, accounting that which was formerly giuen him as part thereof. And this is that in effect, which the Ciuilians call Collatio bonorum.

¶ It

¶ *Et il ſemble que ceſt Parol (hotchpot) eſt en Engliſh*, a Pudding, *&c.* Littleton both here and in other places ſearcheth for the ſignification of words, in all Arts a thing moſt neceſſary, for ignoratis terminis ignoratur & ars vide for Etymologies, Sect. 95. 119. 135. 154. 164. 204. 234. &c.

¶ *Hutſpot* or *Hotſpot*, is an old Saxon word, and ſignifieth ſo much as Littleton here ſpeakes. And the French vſe Hotchpot for a commixtion of diuers things together. It ſignifieth here metaphorically in partem poſitio. In Engliſh we vſe to ſay Hodgepodge, in Latine Farrago or Miſcellaneum.

The reſidue of this Section needeth no explication.

Vide Britt. cap. 72. 4.E.3 49. 6.E.3.30. 10 E.3.38. 24.E.3.27. F.N.B. 262. Regiſt. 320. Fleta lib. 6. ca. 47. Mich 10.E.1. coram Rege Hereford. in the aur.

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¶ Et ceſt terme (Hotchpot) neſt forſq; vn terme ſimilitudinarie, & eſt a tant adire, ceſtaſcauoir, de mitter les terꝛs en Frankmarriage & les auters terres en fee ſimple enſemble, & ceo eſt a tiel entent de conuſter le value de touts les terres, ſ. de les terres dones en Frankmarriage, & de le remnant que ne fueront dones, & donqꝛ partition ſerra fait en le forme que enſuiſt. Sicome mittomus que home ſoit ſeiſie de 30. acres de terre en fee ſimple cheſcun acre de value de 12. d. per an, & que il ad iſſue deux files, & lun eſt couert d baron, & le pier dona 10. acres de les 30. acres a le baron, oue ſa file en Frankmarriage, & mozuſt ſeiſie de l' remnant, donques lauter ſoer entra en le remnant, ſ. ẽ les 20. acres, & eux occupier, a ſon vſe demeſne ſinon que le baron et ſa feme voile mitter les 10. acres dones en Frankmarriage, oue les 20. acres en Hotchpot, ceſtaſcauoir, enſemble, & donque quant le value de cheſcun acre eſt conus ceſtaſcanoir, que cheſcun acre vault per an, & eſt aſſeſſe, ou enter eux agree, que cheſcun acre vault p an 12. d. donques le partition ſerra

AND this tearme *(Hotchpot)* is but a tearme ſimilitudinary, & is as much to ſay, as to put the lands in Frankmarriage, and the other Lands in Fee ſimple together, and this is for this intent, to know the value of all the Lands *ſcz.* of the Lands giuen in Frankmarriage, and of the remnant which were not giuen, and then partition ſhal be made in forme following. As put the caſe that a man be ſeiſed of 30. Acres of Land in Fee ſimple, euery Acre of the value of 12. pence by the yeare, and that hee hath iſſue two Daughters, and the one is Couert baron, and the Father giues 10. Acres of the 30. Acres to the Huſband with his Daughter in Frankmarriage, and dyeth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, *viz.* into the 20. Acres, and ſhall occupie them to her owne vſe, vnleſſe the husband and his wife will put the 10. Acres giuen in Frankmarriage, with the 20. Acres in Hotchpot, that is to ſay, together and then when the value of euery Acre is knowne, to wit, what euery Acre valueth by the yeare, and is aſſeſſed or agreed betweene them, that euery Acre is worth by the yeare 12. pence. Then the partition ſhall be

ſerra fait en tiel forme, ceſtaſcauoir le baron & ſa feme aueront ouſtre les 10. acres dones a eux en Frankmarriage 5. acres en ſeueraltie de les 20. acres & lauter ſoer auera le remnant, ſ. 15. acres de les 20. acres pur ſa purpartie, iſſint que accomptant les 10. acres que le baron & ſa feme ount per le done en Frankmarriage, et les auters 5. acres de les 20. acres, le baron et ſa feme ont autant en annual value, que lauter ſoer ad.

made in this manner, *viz.* the Husband and Wife ſhall haue beſides the 10. acres giuen to them in Frankmarriage 5. Acres in ſeueraltie of the 20. Acres, and the other ſiſter ſhall haue the remnant, *ſciz.* 15. Acres of the 20. Acres for her purpartie, ſo as accounting the 10. Acres which the Baron and Fem haue by the gift in Frankmarriage, and the other 5. Acres of the 20. Acres, the husband and wife haue as much in yearly value as the other ſiſter.

Bract. lib. 2. fol. 77. lib. 5. fol. 428. Britt. cap. 72. & Flora lib. 6. cap. 47.
4. E. 3. 49. 10. E. 3. 37.
(n) 10. E. 3. 37. 10. Aſſ. 14. 4. E. 3. 49.
(o) 39. Aſſ. 23.

AND herewith in expreſſe tearmes agreeth Bracton, Britton, and Flera, and all the bookes aboueſaid and many others. And it is worthy the obſeruation (n) that after this putting into Hotchpot, and partition made, the Lands giuen in Frankmarriage, are become as the other Lands which diſcended from the common Anceſtor, and of theſe Lands if he be impleaded (o) ſhe ſhall haue aide of the other Parcener as if the ſame Lands had diſcended. So the Coparcener that hath a Rent granted to her for oweity of partition, as is aforeſaid, hath the Rent, as if it had diſcended to her from the common Anceſtor.

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ET iſſint touts foits ſur tiel partition, les terres dones en Frankmarriage demurgent a les donees & a lour heires ſolonq; le forme de le done. Car ſi lauter Parceñ aũoit riens de ceo que eſt done en Frankmarriage, de ceo enſueroit inconuiens, & choſe encounter reaſon, que la ley ne voit ſuffer. Et la cauſe pur que les terres dones en Frankmarriage ſerront mis en Hotchpot eſt ceo, quant home done terres ou tenements en Frankmarriage oue ſa file, ou oue auter coſin, il eſt entendus per la ley que tiel done fait per tiel Parol (Frankmarriage) eſt vn auancement, & pur auancement de ſa file, ou de ſon auter coſin, & noſmement quant

AND ſo alwayes vpon ſuch partion the Lands giuen in Frankmarriage remayne to the Donees and to their heires according to the forme of the gift, for if the other Parcener ſhould haue any of that which is giuen in Frankmarriage: of this would enſue an inconuenience, and a thing againſt reaſon, which the Law will not ſuffer. And the reaſon why the Lands giuen in Frankmarriage ſhal bee put in Horchpot, is this when a man giueth Lands or Tenements in Frankmarriage with his Daughter, or with his other Couſin, it is intended by the Law that ſuch gift made by this word (Frankmarriage) is an aduancement, and for aduancement of his Daughter, or of his Couſin, and namely, when

quant le donor et ſes heyres naueront aſcun rent ne ſeruice de eux, ſinon que ſoit fealty, tanque le quart degree ſoit paſſe, &c. Et pur tiel cauſe la ley eſt que el auera riens de les auters terres ou tenemẽts diſcendus, a lauter parcener, &c. ſinon que el voile mitter les terr̃s dones ẽ frankmariage en Hotchpot, come eſt dit. Et ſi el ne voille mitter les terres dones en frankmariage en Hotchpot, donque el nauera riens del remnant pur ceo que ſera entendu per la ley que el eſt ſufficientment auance, a que auancemẽt el ſoy agree & luy tient content.

the donor and his heires ſhall haue no rent nor ſeruice of them but fealty vntill the fourth degree be paſt. And for this cauſe the Law is that ſhe ſhall haue nothing of the other lands or tenements diſcended to the other parcener, &c. vnleſſe ſhee will put the lands giuen in frankmariage in Hotchpot as is ſaid. And if ſhe will not put the lands giuen in frankmariage in Hotchpot, then ſhe ſhall haue nothing of the remnant, becauſe it ſhall be intended by the Law, that ſhe is ſufficiently aduanced, to which aduancement ſhee agreeth and holdes her ſelfe content.

¶ *DE ceo enſueroit enconuenience & choſe encounter reaſon que la ley ne voet ſuffer.*

Quod eſt inconueniens aut contra rationem non permiſſum eſt in lege. Hereby it appeareth, as it hath beene often noted, (o) that an argument ab inconuenienti aut ab eo quod eſt contra rationem, is forcible in Law. (p) Nihil enim quod eſt inconueniens eſt licitum.

Regula.
(*) *Vid. Sect.* 138.139.321. 440.478.488.722.
(p) 40. *Aſſ.* 27.

¶ *Tanque le* 4. *degree ſoit paſſe, &c.* Hereby (&c.) is implyed how the degree ſhall be accounted, whereof ſufficient hath beene ſaid before.

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¶ Mes̃ la ley eſt perenter les heires de les donees en frankmariage, et les auters parceners &c. ſi les donees en frankmariag deuiõt deuãt lour aunceſter, ou deuant tiel partition, &c. quant a mitter en Hotchpot, &c.

THe ſame Law is between the heirs of the donees in frankmariage, and the other parceners, &c. if the donees in frankmariage die before their anceſtor or before ſuch partition, &c. as to put in Hotchpot, &c.

¶ By theſe three (&c.) in this Section is implied that if either the Donees die before the Anceſtor, or ſurviue the Anceſtor and die before ſuch a partition, or if the Donees and all the Parceners die before ſuch partition vpon the putting into Hotchpot, their iſſues ſhall haue the ſame benefit to put the lands into Hotchpot, for that benefit is heritable, and diſcendible to the iſſues.

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¶ ET nota que dones en frankmariage fueront per

ANd note that gifts in frankmariage were by the Cõmon

¶ *Continue, &c.* By this (&c.) is to be vnderſtood that before the Statute it was a fee ſimple, and ſince

ſince the ſtatute a fee taile. So as it is true, that (q) the gifts doe continue (as our Author here ſaith) but not the eſtates. For the eſtate is changed as at large appeareth in the Chapter of eſtates in taile. And albeit our Author here ſaith that ſuch gifts haue beene alwayes ſince vſed and continued, yet now they be almoſt growne out of vſe, and ſerue now principally for Moote caſes and queſtions in Law that thereupon were wont to riſe.

(q) 12.H.4.11. 31.E.3.Gard 116.

la common ley deuant le Statute de Weſtm̃ ſecond, et tout temps puis ad eſte vſe et continue, &c.

Law before the Statute of Weſtm. ſecond and haue beene alwayes ſince vſed and continued, &c.

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THe lands giuen in frankmariage, & the lands in Fee ſimple muſt moue from one and the ſame Anceſter, for the lands giuen in Frankmariage are in reſpect of the aduãcement accounted in Law as hath beene ſaid, as if the ſame had diſcended from the ſame Anceſtor who died ſeiſed of the fee ſimple lands, and there is no reaſon to barre the Donee of her full part of the fee ſimple lands that diſcended from another Anceſtor from whom ſhe had no ſuch aduancement.

¶ *Nemy per le donor, &c.* Here (&c.) implieth no more but that Donor that made the gift of Frankmariage, the other two (&c.) in this Section neede no explanation.

¶ Item, tiel mitter en Hotchpot, &c. eſt lou les auters terres ou tenements q̃ ne fuer̃ dones en frankmariage diſcendont de les donors en frankmariage tantſolement, car ſi les terres diſcenderont a les files per le pier le donor, ou per le mere le donor, ou per le frer̃ le donor, ou auter anceſtor, et nemy per le donor, &c. la auterment eſt, car en tiel cas el a quel tiel done en frankmariage eſt fait auera ſa part ſicome nul tiel done en frankmariage vſt eſte fait, pur ceo q̃ el ne fuit aduanc̃ per eux, &c. eins per vn auter, &c.

ALſo ſuch putting in Hotchpot, &c. is where the other lands or tenements which were not giuen in frãkmariage diſcend from the donors in frankmariage only, for if the lands ſhall diſcend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor or other anceſter, and not by the donor &c. there it is otherwiſe, for in ſuch caſe, ſhee to whom ſuch gift in frankmariage is made ſhal haue her part as if no gift in frankm: had beene made becauſe that ſhe was not aduanced by them, &c. but by another, &c.

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¶ By this Section & the (&c.) herein ſome haue gathered that the value of the lands ſhall be accounted as they were at the time of the gift in

¶ Item, ſi home ſeiſie de 30. acres de terre cheſcun acre de ouel annual value eiant iſſue deux files cõe eſt auantdit, et dona 15. acres de ceo

ALſo if a man bee ſeiſed of 30. acres of land euery acre of equall annuall value, and haue iſſue two daughters as aforeſaid, and giueth 15. acres

ceo a le baron oue ſa file en frankmariage, & mo- ruſt ſeiſie de les auters 15. acres, en ceſt caſe lau- ter ſoer auera les 15. a- cres iſſint diſcẽdus a luy ſole, et le baron et ſa feñ ne mitteront en tiel cas les 15. acres a eux dones en frankmariage en Hotchpot, pur ceo q̃ les teneñts dones ẽ frank- mariage ſont de auxy grand et de bone annual value, come les auters terres diſcendus, &c. Car ſi les terres dones en frankmariage ſont de tant egal annual value, que le remnant ſont, ou de pluis value, en vaine et a nul entent tielx te- nemẽts dones en frank- mariage ſerra mis en Hotchpot, &c. pur ceo que el ne poit riens auer de les auters terres diſcen- dus, &c. car ſi el añoit aſ- cun parcel de les tene- ments diſcendus, don- ques el auera pluis de annual value que ſa ſoer &c. que la ley ne voit, &c. Et ſicome eſt parle ẽ les caſes auantdits de deux files ou de deux parce- ners, en ñ le maner eſt en ſemblabl cas lou ſont pluſors ſoers ou pluſors parceners, ſolonq̃ ceo q̃l caſe & l matter eſt, &c.

hereof to the husband with his daughter in frankmariage, and dies ſeiſed of the other 15. acres. In this caſe the other ſiſter ſhall haue the 15. acres ſo diſcended to her alone, and the husband and wife ſhall not in this caſe put the 15. acres giuen to them in frankmariage into Hotchpot, becauſe the tenements giuen in frankmariage are of as great and good yearely value as the other lands diſcended, &c. for if the lands giuen in frankmariage bee of equall or of more yearely value then the remnant, in vaine and to no purpoſe ſhall ſuch tenements giuen in frankmariage bee put in Hotchpot, &c. for that ſhee cannot haue any of the other lands diſcended, &c. for if ſhee ſhould haue any parcell of the lands diſcended, then ſhe ſhall haue more in yearly value then her ſiſter, &c. which the Law will not, &c. And as it is ſpoken in the caſes aforeſaid of two daughters or of two parceners; in the ſame manner it is in like caſe where there are more ſiſters or more parceners according as the caſe and matter is, &c.

frankmariage, but it is cleere that the value ſhall bee accounted as it was at the time of the partition, for if the Donor purchaſe more land after the gift, or if the land giuen in frankmariage be by the act of God decayed in value, or if the remnant of the lands in fee ſimple be improued after the gift, or è conuerſo the Law ſhall adiudge of the value as it was at the time of the partition (vnleſſe it bee by the proper act or default of the parties) as hath beene ſaid before in the former Chapter. And ſome haue collected vpon this Section that the reuerſion in fee of the lands giuen in frankmariage ſhall only diſcend to the Donee, for otherwiſe the other ſiſter ſhal haue more benefit, then the Donee which ſhould bee againſt the reaſon of our Author.

¶ *In vaine & a nul entẽt, &c.* For it is a maxime in Law Lex non præcipit in vtilia, quia inutilis labor ſtultus.

Regula. Vid. Sect. 194. 578. Lib. 5 fo. 89.

Sect. 274.

ET eſt aſcauoire, que Terres ou tenemẽts dones en frankmariage ne ſerra miſe en Hotchpot, **forſque ou Terres diſcende en fee ſimple, car de terre diſcendus en fee taile Partition ſerra fait, ſicome nul tiel done en frãkmarriage vſt eſte fait.**

AND it is to be vnderſtood, that Lands or Tenements giuen in Frankmarriage ſhall not bee put in *Hotchpot* but where Lands diſcend in Fee ſimple, for of Lands diſcended in Fee taile partition ſhall bee made, as if no ſuch gift in Frankemarriage had been made.

31. Aſſ. pla. 14

¶ FOr of Lands intailed, the Donee in Frankmarriage ſhall haue as much part as the other Coparcener, becauſe ouer and beſides the Land giuen in Frankmarriage, the Iſſue in Taile claimeth per formam doni, **and both of the Parceners muſt equally inherit by force of the gift,** & voluntas Donatoris, &c. obſeruetur.

Sect. 275.

¶ ITem nuls Terres ſerra miſe en Hotchpot **oue auꝰ ſinon terres que fueront done en frankmariage tantſolement: Car ſi aſcun Feme ad aſcuns auters terres ou tenemẽts per aſcun auter done en le tayle, el ne vnques mittera tiel Terre iſſint done en** Hotchpot, **mes el auera ſa purpartie de le remnãt diſcendus, &c. ſ, a tant que lauter Parcener auera d̃ m̃ ꝑ remnant.**

ALſo no Lands ſhall bee put in *Hotchpot* with other Lands, but Lands giuen in Frankmarriage onely: for if a woman haue any other Lands or Tenements by any other gift in taile, ſhe ſhall neuer put ſuch Lands ſo giuen in *Hotchpot*, but ſhe ſhall haue her purpartie of the remnant diſcended, &c. *(videlicet)* as much as the other Parcener ſhall haue of the ſame remnant.

13. E. 2. tit. Taile 26.
6. E. 3. 30. b. 4. E. 3. 49. 50.

¶ FOr if the Anceſtor infeoffeth one of his daughters of part of his Land, or purchaſe lands to him and her and their heires, or giueth to her part of his lands in Taile ſpecial or generall, ſhe notwithſtanding this ſhall haue a full part in the remnant of the lands in Fee ſimple, for the benefit of putting, &c. into Hotchpot, **is onely appropriated to a gift in Frankmarriage,** (quia maritagium cadit in partem) **which ſhall be** (as is aforeſayd) **accounted as parcell of his aduancement.**

Brak. li. 2. fo. 77.

Sect. 276.

¶ ITem vn auter Partition poet eſte fait inter parceñs, que variaſt de les Partitions auantdits. Sicome y ſõt trois Parceners, & le puiſn̄ voet auer partition, & les auꝰ deux ne voillont, mes voilent tener en parcenarie ceo que a eux affiert

ALſo another partition may be made betweene Parceners, which varieth from the Partitions aforeſayd. As if there bee three Parceners and the youngeſt will haue partition, and the other two will not, but will hold in parcenarie that which to them belon-

ert sans partē, en cē case si vn pt soit alot en seūalty al puisne soer solonqꝫ ceo que el doit auer, donques les auters poient tener le remnant en parcenarie, & occupier en common sans partition si els voilent, & tiel partition est assets bone. Et si apres leigne ou le mulnes Parcener voile fayze partition inter eux, & ceo que ils teignont ils teignont, ils poient ceo bien faire quant a eux pleist. Mes lou partition serra fait per force de Briefe de Partitione facienda, la auterment est car la conient que chescun Parcener auera sa part en seueraltie, &c.

geth, without partition: in this case if one part be allotted in seueraltie to the youngest sister, according to that which shee ought to haue, then the others may hold the remnant in parcenarie, and occupie in Common without Partition, if they will, and such partition is good enough. And if afterwards the eldest or middle parcener will make partition betweene them of that which they hold, they may well do this when they please. But where partition shall bee made by force of a Writ of *Partitione facienda*, there it is otherwise, for there it behoueth that euerie parcener haue her part in seueraltie, &c.

¶ Pluis serē dit des parceūs en le Chapter de Joyntenants, & aury en le Chapter de Tenāts in Common.

More shall bee said of parceners in the Chapter of Ioyntenants, and also in the Chapter of Tenants in Common.

¶ HEre it is to be obserued, That this partition is good by consent, for Consensus tollit errorem, but if t be by the Kings writ, then euerie Parcener must haue hts part. And here you may see that modus & conuentio vincunt legem. 24.H.3.tit.Partin.19. Regula.

¶ *En seueraltie, &c.* Here by this (&c.) is implied another kind of seueraltie than our Author hath mentioned, and that is, That the one Parcener shall haue the land in seueraltie from the feast of Easter, vntill the guls of August, (that is, the first of August) and the other in seueraltie from thence vntill the feast of Easter, or the like, & sic alternis vicibus to them and their heires imperpetuum, whereof sufficient hath beene spoken before.

Chap.3. Of Ioyntenants. *Sect.277.*

¶ Joynteūts sont, sicome home seisie de certain Terēs ou Tenements, &c. & enfeoffe deux, trois, quater, ou pluso3s, a auer & teñ a eux pur term de lour vies, ou a terme dauter vie, p force de quel feoffm̄t ou lease ils sont sei-

IOyntenants are, as if a man bee seised of certaine Lands or Tenements, &c. and infeoffeth two, three, foure, or more, to haue and to hold to them for term of their liues, or for terme of anothers life, by force of which feoffement or

¶ THIS agreeth not with the Original, for it should bee, Joynt̄ sont sicōe hōe seisie de certaine terres ou tenements, &c. & ent enfeoffe deux ou trois, ou quater, ou plusors a auer & tener a eux & a lour heires ou lessa a eax pur terme de lour vies, ou pur terme dauter vie, per force de quel feoffement, ou lease, &c. The error may easily bee perceiued by that which is in print, viz. By force of which feoffement or lease, &c. ergo there must bee *Brack.li.4 fo.262. Brit.ca.35. & fo.112. Flet.lib.3.ca.4.10. & li.6.cap.47.*

the feoffment and leaſe ſpoken of before.

ſies, tiels ſont Ioyntenants.

leaſe they are ſeiſed, theſe are Ioyntenants.

There be alſo Ioyntenants by other conueyances than Littlet. here mentioneth as by Fine, Recouerie, Bargaine, and Sale, Releaſe, Confirmation, &c. So there be diuers other limitations than Littleton here ſpeaketh of: As if a Rent charge of ten pounds be granted to A. and B. to haue and to hold to them two, viz. to A. vntill he be married, and to B vntill he be aduanced to a Benefice, they be Ioyntenants in the meane time, notwithſtanding the ſeuerall limitations: and if A. die before marriage, the rent ſhall ſuruiue; but if A. had married, the rent ſhould haue ceaſed for a moitie, & ſic è conuerſo on the other ſide.

Littleton hauing ſpoken of one kind of Tenants pro indiuiſo, viz. of Parceners, commeth now to another, viz. Ioyntenants, and firſt of Ioyntenants of Freehold. If an Alien and a ſubiect purchaſe lands in fee, they are ioyntenants, & the ſuruiuorſhip ſhall hold place, Et nullum tempus occurrit Regi, vpon an office found.

9.E.4.39. 11.H.4.26.

¶ *Ioyntenants*, **So called becauſe the lands or tenements, &c. are** conueyed to them ioyntly, coniunctim feoffati, &c. or, qui coniunctim tenent, and are diſtinguiſhed from ſole or ſeuerall Tenants, from Parceners, and from Tenants in Common, &c. and antiently they were called Participes, & non hæredes. And theſe Ioyntenants muſt ioyntly implead and ioyntly be impleaded by others, which propertie is common betweene them and Coparceners, but Ioyntenants haue a ſole qualitie of ſuruiuorſhip, which Coparceners haue not. Littleton hauing now ſpoken of Parceners and of Ioyntenants of right, doth next ſpeak of Ioyntenants by wrong.

Plow.lib.6.ca.47. Brak.lib.3.fol.435.a.

Section 278.

¶ IT is to bee obſerued, That ſome Diſſeiſours, be Tenants of the land and ſome be no Tenants of the Lands, and of both theſe kinds Littleton here ſpeaketh.

Item ſi deux ou trois, &c. diſſeiſont vn auť daſcun terres ou Tenements a lour vſe demeſne: donques les Diſſeiſours ſont Ioyntenants. Mes ſils diſſeiſõt vn auter al vſe dun de eux, donques ils ne ſont Ioyntenants, mes celuy a que vſe le diſſeiſin eſt fait eſt ſole tenant, & ls auters nont riens en le tenancie, mes ſont appels coadiutors a le diſſeiſin, &c.

Alſo if two or three &c. diſſeiſe another of any lands or tenements to their owne vſe, then the diſſeiſors are Ioyntenants. But if they diſſeiſe another to the vſe of one of them, then they are not Ioyne-Tenants, but he to whoſe vſe the Diſſeiſin is made, is ſole Tenant, and the others haue nothing in the Tenancie, but are called Coadiutors to the Diſſeiſin, &c.

50.E.3.2.17.Aſſ.14. 24.Aſſ.12. 8.Aſſ.p.30. 20.E.3.47. 10.Aſſ.22. 22.H.8.tit. Diſſeiſ.b.77. 28.Aſſ.21. 27.Aſſ.30. 12.E.4.9. 7.E.4.7.b. 38.Aſſ.7. 21.H.7.35. 39.Aſſ.59. 21.H.8.25. 35.H.6.61. 21.E.4.46. 15.E.4.15. F.N.B.179.g.

¶ *&c.* **In the firſt** &c. nothing is implied but foure or five, or more, but in the latter (&c.) many things be to be vnderſtood, as of Diſſeiſors that be no Tenants, ſome are Coadiutors, whereof Littleton here ſpeaketh, ſome Councellors, Commanders, &c. when the diſſeiſin is not to bee done to any of their vſes. Alſo if A. diſſeiſe one to the vſe of B. who knoweth not of it, and B. aſſent to it, in this caſe till the agreement A. was Tenant of the land, and after agreement B. is Tenant of the land, but both of them be Diſſeiſors: for omnis cæ-titrabitio retrotrahitur et mandato equiparatur. And it is worthie of the obſeruation, and implyed alſo in the latter (&c.) that ſeeing Coadiutors, Councellors, Commanders, &c. are all Diſſeiſors, that albeit the Diſſeiſor which is Tenant dieth, yet the Aſſiſe lieth againſt the Coadiutor, Councellor, Commander, &c. and Tenant of the land, though he be no diſſeiſor.

(a) 50.E.3.2.

(a) The Demandant and others in a Præcipe did diſſeiſe the Tenant to the vſe of the others, and the writ did not abate, for the Demandant was a Diſſeiſor, but gained no tenancie in the land, for that he was but a Coadiutor.

A man diſſeiſeth Tenant for life to the vſe of him in the reuerſion, and after he in the reuerſion agreeth to the diſſeiſin, it is ſaid, That he in the reuerſion is a Diſſeiſor in fee, for by the diſſeiſin made by the ſtranger, the reuerſion was diueſted, which (ſay they) cannot bee reueſted by the agreement

agreement of him in the Reuerſion, for that it maketh him a wrong doer, & therefore no relation of an eſtate by wrong can helpe him.

¶ *Coadiutor.* Coadiutor eſt qui auxiliatur alteri, and is deriued a coadiuuando. Anglicè, a fellow helper.

Sect. 279.

¶ Et nota q̃ diſſeiſin eſt p̃mẽt lou vn home entra ẽ aſcun terres ou tenements lou ſon entre neſt pas congeable, & ouſta celuy que ad Franktenement, &c.

And note that diſſeiſin is properly where a man entreth into any Lands or Tenements where his entry is not congeable, & ouſteth him which hath the Freehold, &c.

¶ This deſcription of a diſſeiſin and the (&c.) in this place is vnderſtood only of ſuch Lands and Tenements whereinto an entry may bee made, and not of Rents, Commons, &c. whereof ſufficient hath beene ſaid before in the Chapter of Rents, and ſo in effect Littleton deſcribed it before the Edition of his Booke. And note here that euery entry is no diſſeiſin, vnleſſe there bee an ouſter alſo of the Freehold. And therefore Littleton doth not ſet downe an entrie only but an ouſter alſo, as an entry and a claymer, or taking of profits, &c.

3.E.4.2.34.Aſſ.11.12. 26.Aſſ.17.41.Aſſ.10.24.E. 3.31.Pl.Com.87. Perſon de Hony Lane. 7.Aſſ.10. 11.Aſſ.25. 12.E.3.tit.Aſſ.88.45.Aſſ.7. 9.Aſſ.19.39.Aſſ.1.18.E.2. Aſſ.374.

Now as there be Ioyntenants by diſſeiſin, ſo are there Ioyntenants by Abatement, Intruſion, and Vſurpation, all which are included in the latter, &c.

Sect. 280.

¶ Et eſt aſcauoir que la nature de ioyntenancie eſt q̃ celuy que ſurueſquiſt auera ſolement lentier tenancie ſolonq; tiel eſtate que il ad, ſi le ioynture ſoit continue, &c. Sicome ſi trois Ioyntenants ſont en Fee ſimple, & lun ad iſſue & deuie, vncore ceux que ſurueſquont aũont les tenements entier, & iſſue nauera riens. Et ſi le 2. ioyntenant ad iſſue & deuie, vncore le tierce que ſurueſquiſt auera les tenemẽts entier, & eux auera a luy & a ſes

And it is to be vnderſtood, that the nature of ioyntenancie is, that hee which ſuruiueth ſhall haue only the entire tenancie according to ſuch eſtate as he hath, if the ioynture be continued, &c. As if three ioyntenants bee in Fee Simple, and the one hath iſſue, and dyeth, yet they which ſuruiue ſhall haue the whole tenements, and the iſſue ſhall haue nothing. And if the two ioyntenants hath iſſue and dye, yet the third which ſuruiueth ſhall haue the whole tene-

¶ *Si le ioynture ſoit continue, &c.*

Here by this (&c.) many points of Learning are to bee obſerued, as that it is proper to ioyntenants only to haue Lands by Suruiuor, for no Suruiuor of other Tenants pro indiuiſo ſhall haue the whole by Surviour, but only ioyntenants, and this is called in Law Ius accreſcendi. Omnes feoffati ſunt ſimul habendi & tenendi nec totum nec partem ſeparatam nec per ſe, ſed vt quilibet eorum totum habeat cum alijs in communi, & cum vnus moriatur non diſcendit aliqua pars hæredi morientis nec ſeperata nec in cõmuni ante mortem omnium ſed pars illa communis per ius accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam vſque ad vltimum ſuperſtitem. But although Suruiuorſhip bee proper to Ioyntenants, yet it is not proper quarto modo (that is) omni, ſoli & ſemper, for there may bee

Bracton lib.4. fol.262.b. Britton cap.35. Fleta lib.3. ca.4.& ca.10.49.E.3.fol.3.6

Ioyntenants, though there be not equall benefit of Suruiuor on both sides. As if a man letteth Lands to A. and B. during the life of A. if B. dyeth A. shall haue all by the Suruiuor, but if A. dyeth B. shall haue nothing.

Two or more may haue a Trust or an Authoritie committed to them ioyntly, and yet it shall not suruiue. But herein are diuers diuersities to be obserued: First, there is a diuersitie betweene a naked Trust or an Authoritie, and a Trust or Authoritie ioyned to an estate or interest. Secondly, there is a diuersitie betweene Authorities created by the partie for priuate causes, and Authoritie created by Law for execution of Iustice. As for example, (b) if a man deuise that his two Executors shall sell his Land, if one of them dye the Suruiuor shall not sell it, but if he had deuised his Lands to his Executors to be solde there, the Suruiuor shall sell it, which diuersitie is implyed by our Author, for hee saith, that he, that suruiueth shall haue the entire Tenancie.

If a man make a letter of Atturney to two, to doe any act, if one of them dye, the Suruiuor shall not doe it; but if a Venire facias be awarded to foure Coroners to impannell and returne a Iury, and one of them dye, yet the other shall execute and returne the same.

If a Charter of feoffement (c) be made, and a Letter of Atturney to foure or three ioyntly and seuerally to deliuer seisin, two of them cannot make liuery, because it is neither by them foure or three ioyntly, nor any of them seuerally: but if the Sherife vpon a Capias directed to him make a Warrant to foure or three ioyntly or seuerally to arrest the Defendant, two of them may arrest him, because it is for the execution of Iustice (d) which is pro bono publico, and therefore shall be more fauourably expounded, then when it is only for priuate, and so hath it beene adiudged, Iura publica ex priuato promiscuè decidi non debent.

¶ *Et deuie.* Note there is a naturall death and a ciuill death, and Littletons Case is to be intended of both, and therefore (e) if two Tenants be, and one of them entreth into Religion, the Suruiuor shall haue the whole.

b) 39. Ass. p. 17. 30. H.8. tit. deuise B. Dyer 3. Eliz. 190. 49. E. 3. 16. 2. Eliz. Dyer 177. 23. Eliz. Dyer 371. 4. Eliz. Dyer 210. 10. H. 4. 2. & 3. 14. H. 4. 34. 39. H. 6. 42. 31. Ass. 20. 33. H. 8. ioynt. Br. 62. 30. H. 8. condition Br. 190.

(c) 38. H. 8. Dyer 62. 27. H. 8. fol. 6.

(d) Pasch. 45. Eliz. in the Kings Bench betweene King Hobbes.

(e) 21. R. 2. iudgment. 263.

heires a touts iours Mes auterment est de Parceners. Car si trois parceners sont, & deuant ascun partition fait lun ad issue & denie, ceo que a luy affiert discendra a ses coheires issint q̄ ils aueront ceo per discent, & nemy per suruiuor, come ioyntenants aueront, &c.

ments to him and to his heires for euer, but otherwise it is of Parceners, for if three Parceners bee, and before any partitiō made the one hath issue and dyeth, that which to him belongeth shall discend to his issue, and if such Parcener die without issue, that which belongeth to her shal discend to her coheires so as they shall haue this by discent & not by suruiuour, as Ioyntenants shall haue, &c.

Sect. 281.

¶ ET come le suruiuor tient lieu enter iointenants, en mesme le maner il tient lieu enter eux queux ont ioynt estate ou possession oue auter de chattel real ou personal. Sicome si leas de terres ou tēts soit fait a pluis pur terme des ans, celuy q̄ suruesquist de les lessees auera les tenements a luy entier, durant l'terme, per force de mesme le leas. Et si vn chiual ou vn auter

AND as the suruiuour holds place betweene ioyntenants, in the same manner it holdeth place betweene them which haue ioynt Estate or Possession with another of a Chattell, reall or personall. As if a Lease of Lands or Tenements bee made to many for tearme of yeares, hee which suruiues of the Lessees, shall haue the Tenements to him only during the terme by force of

ter chattel perſonall ſont done a pluſoꝛs, celuy que ſuruelquiſt auera le chiual ſolement.

the ſame leaſe. And if a Horſe, or any other chattell perſonall be giuen to many, hee which ſuruiueth ſhall haue the Horſe only.

THereby it is manifeſt that Suruiuoꝛ holdeth place, regularly aſwell betweene Ioyntenants of Goods and Chattels in poſſeſſion oꝛ in right, as Ioyntenants of Inheritance oꝛ Freehold.

C *Chattell*, oꝛ Catell, **whereof commeth the woꝛd vſed in Law** (f) Catalla and is as Littleton here teacheth twofold, viz. reall and perſonall, and putteth examples of both.

(f) *Regiſt. Origin. 139. 244. Bract. lib. 2. 39. H. 6. 35. Stanford. Pr. 45.*

Section 282.

CEſt meſme le maner eſt de debts & duties &c. car ſi vn obligation ſoit fait a pluſoꝛs pus vn debt, celuy q̄ ſuruelquiſt auera tout le det ou dutie. Et iſſint eſt dauters Couenants & Contracts, &c.

IN the ſame manner it is of debts and duties, &c. for if an Obligation be made to many for one debt, hee which ſuruiueth ſhall haue the whole debt or dutie. And ſo is it of other Couenants and Contracts, &c.

CNOw hee ſpeaketh of Debts, Duties, Couenants, Contracts, &c.

C *Dets & Duties, &c.* Here by force of this (&c.) an exception is to bee made of two ioynt Merchants, for the Wares, Merchandizes, Debts, oꝛ Duties that they haue as ioynt-merchants oꝛ Parteners ſhal not ſuruiue, but ſhall goe to the Executoꝛs of him that deceaſeth, and this is per legem Mercatoriam, which (as hath beene ſaid) is part of the Lawes of this Realme for the aduancement and continuance of Commerce and Trade which is pro bono publico, for the rule is, That ius accreſcendi inter Mercatores pro beneficio commercij locum non habet.

F.N.B. 117. E. 38. E. 37.

And to the latter (&c.) in this Section the like exception muſt be made.

Section 283.

CItem, aſcũs ioyntenants poient eſtre que poient auer ioint eſtate, et eſtre iointenãts pur terme de lour vies, et vncoꝛe ils ont ſeuerall enheritances. Sicõe terres ſoient doneꝛ a deux homeꝛ et a leꝛ heires de lour deux coꝛps engendꝛes, en ceſt caſe leꝛ doneeꝛ ont ioint eſtateꝛ pur terme de lour deux vies, et vncoꝛe ils oũt

ALſo there may bee ſome ioyntenants which may haue a ioint eſtate, & be ioynt-tenants for terme of their liues, & yet haue ſeuerall inheritances. As if lands be giuen to two men and to the heires of their two bodyes begotten, In this caſe the donees haue a ioint eſtate for terme of their two liues, and yet they haue ſeuerall inheritances, for if one of

C *Ils ont ioynt eſtate pur terme de lour deux vies, &c.* Note, albeit they haue ſeuerall Inheritances in tayle, and a particular eſtate for their liues, yet the Inheritance doth not execute, and ſo breake the Ioyntenancie, but they are ioyntenants for life, and tenants in Common of the Inheritance in tayle.

Vide Sect. 296.

C *Sicome home & fem poient auer, &c.* Here a diuerſitie is implyed, when the eſtate of Inheritance is limited by one conueyance, as

Vide Woſcotes caſe. Lib. 2. fol. 60. 61.

as in this case it is, there are no seuerall estates to drowne one in another, But when the states are deuided in seuerall conueyances their particular estates are distinct and deuided, and consequently the one drowneth the other: As if a Lease be made to two men for terme of their liues, and after the Lessor granteth the reuersion to them two, and to the heires of their two bodyes the ioynture is seuered, and they are Tenants in common in possession. And it is further implied that in this case of Littleton there is no diuision betweene the estate for liues, and the seuerall inheritances, for in this case they cannot conuey away the inheritances after their decease, for it is deuided only in supposition and consideration of Law, and to some purposes the inheritance is said to be executed, as shall bee said hereafter.

Vid.12.E.4.2.b.

If a man make a Lease for (f) life, and after granteth the reuersion to the Tenant for life, and to a stranger and to their heires, they are not ioyntenants of the reuersion, but the reuersion is by act of Law executed for the one moitie in the Tenant for life, and for the other moity he holdeth it still for life the reuersion of that moitie to the grantee.

(f) 39.H.6.2.b.

And so it is, if a man maketh a lease (g) to two for their liues, and after granteth the reuersion to one of them in fee, the ioynture is seuered, and the reuersion is executed for the one moity, and for the other moity there is Tenant for life the reuersion to the Grantee.

(g) Wolfots case, vbi supra.

If Lessee for life granteth his estate to him in the reuersion and to a stranger, the ioynture is seuered, and the reuersion executed for the one moitie by the act of Law.

Ibidem. 7.H.6.

seuerall inheritances, car si lun des donees ad issue et deuy, lauter que suruesquist auera tout p le suruiuor pur terme de sa vie, et si celuy que suruesquist auxy ad issue, et deuy, donques l issue del vn auera lun moitie, et lissue del auter auera lauter moitie d la terre, et ils tiendront la terre enter eux ẽ common, et ne sont pas iointenãts, mes sont tenants en common. Et la cause pur q̃ tielx donees en tiel cas ont ioint estate pur terme de lour vies, est p̃ ceo que al commencement les fres fuerõt doneʒ a eux deux, les queux parolx sãs pluis dire font ioint estate a eux pur terme de lour vies. Car si home voit lesser fre a vn auter p fait ou sans fait, nient feasant mention q̃l estate il aueroit, et de ceo fait liuerie de seisin en ceo case le lessee ad estate pur terme de sa vie et issint entant que les terres fueront dones a eux, ils ont ioint estate pur terme de lour vies: & la cause pur q̃ ils aueront seueral enheritances est ceo, entant que ils ne poiẽt aũ p nul possibility

the Donees hath issue and die, the other which suruiueth shall haue the whole by the suruiuor for terme of his life, and if he which suruiueth hath also issue, and die, then the issue of the one shall haue the one moity, and the issue of the other, shall haue the other moity of the land, and they shall hold the land betweene them in Cõmon, and they are not ioyntenants but are tenants in common. And the cause why such Donees in such case haue a ioynt estate for terme of their liues, is, for that at the beginning the lands were giuen to them two, which words without more saying make a ioynt estate to them for terme of their liues. For if a man will let land to another by deed or without deed, not making mention what estate hee shall haue, and of this make liuery of seisin, in this case the lessee hath an estate for terme of his life, and so in as much as the lands were giuen to them, they haue a ioynt estate for terme of their liues, & the reason why they shall haue seuerall inhe-

lity vn heire enter eux ingendrer, sicome hõe et fem̃ poient auer, &c. donqz la ley voet que lour estate et lour enheritance soit tiel cõe reason voet, solonqz la forme et effect des parolx del done, et ceo est a les heires q̃ lun engendra de son corps p̃ascun de ses femes, q̃ a les heires q̃ lauter engendra d̃ son corps p̃ascun de ses femes, &c. Issint il couient p̃ necessitie de reason que ils aueront seueralx enheritances. Et en tiel cas si lissue dun des donees apres la mort des donees denie, issint q̃ il nad ascun issue en vie de son corps engẽdre, donqz le donor ou son heyre poit enter en la moitie come en son reuersion, &c. coment q̃ lauter des donees ad issue en vie, &c. Et la cause est que entant q̃ les enheritãces sont seueral, &c. le reuersion de eux en ley est seueral, &c. et le survivor del issue del auter ne tiendra pas lieu dauer lentierẽ.

ritances is this, in asmuch as they cãnot by any possibility haue an heire between them ingendred, as a man and woman may haue, &c. the Law will that their estat and inheritance be such as is reasonable, according to the forme and effect of the words of the gift, and this is to the heires which the one shall beget of his body by any of his wiues, and to the heires which the other shall beget of his body by any of his wiues, &c. So as it behoueth by necessity of reason that they haue seueral inheritances. And in this case if the issue of one of the donees after the death of the donees dy, so that he hath no issue aliue of his body begotten, then the donor or his heire may enter into the moity as in his reuersion, &c. although the other donee hath issue aliue, &c. and the reason is, forasmuch as the inheritances bee seueral, &c. the reuersion of them in Law is seuerall, &c. and the suruiuor of the issue of the other shall hold no place to haue the whole.

If a man maketh a Lease for life and granteth the reuersion to two in fee, the Lessee granteth his estate to one of them, they are not ioyntenants of the reuersion, for there is an execution of the estate for the one moity, and an estate for life, the reuersion to the other of the other moity.

Here Littleton hath well resolued a doubt, for of ancient time it hath beene said (h) That when lands haue beene giuen to two women, and to the heires of their two bodyes begotten (which case our Author putteth in the next Section) that the husband hauing issue should be Tenant by the Curtesie liuing the other sister, for that as some held the inheritance was executed, and that the sisters were Tenants in Common in possession, and consequently the husband to be Tenant by the Curtesie, which he could not be if the women had a ioynt estate for terme of their liues: and likewise it was said (i) that the issue of the one should recouer the moity in a Formdone liuing the other sister. But, Verba sunt hæc, and Littleton grounding himselfe vpon good Authority in Law hath cleered this doubt.

(h) 17.E.3.51.78. 18.E.3.39. 50.E.3. Statham. tit. done. 50.E.3. Feoffments & faits. 97.

(i) 44.E.3. taile 13. 8.Ass.33. 24.E.3.29. 7.H.4.16. Corbets case. lib.1.fo.8. 84.6. 4.Maria Dier 145. See before in the chapter of Tenures by the curtesie Sections.

¶ *Nient feasant mention quel estate il aueroit.* Here Littleton addeth materially (not making mention of what estate) for (k) if in the premisses lands be letten, or a rent granted, the generall intendment is, that an estate for life passeth, but if the Habendum limit the same for yeares or at will, the Habendum doth qualifie the generall intendment of the premisses; And the reason of this is, for that it is a maxime in Law, That euery mans grant shall be taken by construction of Law most forcible against himselfe. Quæliber concessio fortissimè contra donatorem interpretanda est, which is so to be vnderstood that no wrong be thereby done, for it is another maxime in Law Quod legis constructio non facit iniuriam: And therefore if Tenant for life maketh a Lease generally, this shall bee taken by construction

(k) Pl.Com. in Throgmorton case.

Regula.

construction of Law, an estate for his own life that made the Lease, for if it should be a losse for the life of the Lessee, it should be a wrong to him in the reuersion. And so it is if Tenant in taile make a Lease generally, the Law shall contriue this to bee such a Lease as hee may lawfully make, and that is for terme of his owne life; for if it should be for the life of the Lessee, it should be a discontinuance, and consequently the state which should passe by construction of law should worke a wrong.

¶ *Et issint entant que les terres fueront dones a eux ils ount ioynt estate pur lour vies.* **This is plaine, but with this exception, Unlesse the** Habendum doth otherwise limit the same. And therefore if a Lease be made (l) to two, Habendum to the one for life, the remainder to the other for life, this doth alter the generall intendement of the premisses, and so hath it beene oftentimes resolued. And so it is if a Lease be made to two, habendum the one moitie to the one, and the other moitie to the other, the habendum doth make them Tenants in Common, and so one part of the Deed doth explaine the other, and no repugnancie betweene them, Et semper expressum facit cessare tacitum.

(l) 8.E.3.427.tit.Feoffem. & Fait 73.30.H.8.tit. Ioynt.Br.53. Dyer fo.361. Pl.Com.160.

¶ *Per nul possibilitie.* **Here it is to be obserued, That where the** Grant is impossible to take effect according to the Letter, there the Law shall make such a construction as the gift by possibilitie may take effect, which is worthie of obseruation. Benignæ faciendæ sunt interpretationes cartarum propter simplicitatem Laicorum, vt res magis valeat quam pereat.

Bract.

¶ *Issint il couient per necessitie de reason.* **The reason of the Law is** the life of the Law, for though a man can tell the Law, yet if he know not the reason thereof, he shall soone forget his superficiall knowledge: but when he findeth the right reason of the law, and so bringeth it to his naturall reason, that he comprehendeth it as his owne, this will not onely serue him for the vnderstanding of that particular case, but of many other. For Cognitio legis est copulata & complicata: **And this knowledge will long remaine with him,** all which is plainely implied by the words, and (&c.) of our Author in this Section.

¶ *Et en tiel case si lissue dun des Donees apres la mort des Donees deuie issint que il nad ascun issue en vie de son corps engendres, donques le Donor ou son heire poet enter en le moitie.* **This is mistaken in the imprinting, and va-**rieth from the originall, which is, Si lun Donee ou lissue dun des Donees apres la mort des Donees deuie, issint que il nad ascun issue, &c. For it is euident, that if the one Donee, himselfe dieth without issue, the Inheritance doth reuert for a moitie, and after the decease of the other Donee, the Donor may enter into that moitie, and whether the Issue of the one Donee dieth without Issue at any time either in the life of the other Donee, or after his decease, it is not materiall, for whensoeuer no issue is remaining of the one Donee, so as the state taile is spent, the Donor may after the decease of the surviuing Donee, enter into that moitie.

Aristot.1.Metaphis.

¶ *Et la cause est, que entant que les inheritances, &c.* **Littleton in this** Chapter hath often sayd, Et la cause est, which is worthie of obseruation, for then we are truly sayd to know any thing, when we know the true cause thereof: Tunc vnumquodque scire dicimur cum primam causam scire putamus: Scire autem proprie est rem ratione & per causam cognoscere.

Virg.1.Georg.

Fœlix qui potuit rerum cognoscere causas.

And therefore all Students of Law are to applie their principall indeauour to attaine thereunto, all which is implied by the words and seuerall &c. in this Section.

Here the cause of the entrie of the Donor into a moitie in this case is, That in as much as the Inheritance is seuerall, the reuersion is seuerall. Therefore vpon the seuerall determination of the estate in taile, the Donor may enter, and the Law termeth a reuersion to bee expectant vpon the particular estate, because the Donor or Lessor or their heyres after euerie determination of any particular estate, doth expect or looke for to enioy the Lands or Tenements againe.

Dyer 14.El.309.

¶ *Le reuersion de eux en ley est seuerall, &c.* **Hereby, and by this** (&c.) is implied, That vpon one ioynt or entire gift or Lease there is one ioynt or entire reuersion, and vpon seuerall gifts or Leases there be seuerall reuersions. And this is to be vnderstood of the reuersion in the Donor or his heires. But albeit the gifts or Leases be seuerall, yet if the Donors or Lessors grant the reuersion to two or more persons and their heires, they are Ioyntenants of the reuersion. And so it is of a Remainder: and therefore if a gift be made to two men and the heires of their two bodies begotten, the remainder to them two and their heires, they are Ioyntenants for life, Tenants in Common of the state taile, and Ioyntenants of the fee

ta simple in remainder, for they are Ioynt purchasers of the Fee simple, and the remainder in tail is a new created estate, but the reuersion remaining in the Donor, or his heires, is a part of his antient Fee simple.

Sect. 284.

CEt sicome est dit de males, en meisme le manner est lou terre est done a deux females, & a les hẽs ô lour deux corps engendres.

AND as it is sayd of Males, in the same manner it is where land is giuen to two females, and to the heires of their two bodies engendred.

CIf a man giueth Lands to two men and one woman, and the heires of their three bodies begotten, In this case they haue seuerall Inheritances, for albeit it may be sayd, that the woman may by possibilitie marry both the men one after another, yet first she cannot marrie them both in præsenti, and the Law will neuer intend a possibilitie vpon a possibilitie, as first to marrie the one, and then to marrie the other. Secondly, the forme of the gift is, To the heires of their three bodies, which is not possible, and therefore they shall haue seuerall Inheritances. And so it is, if a gift be made to one man and to two women, mutatis mutandis. In the same manner, if a gift in taile be made to a man and his mother, (m) or to a man and his sister, or to him and his Aunt, &c. in this and like cases, albeit the gift is made to a man and a woman, yet they haue seuerall inheritances, because they cannot marrie together, and are within the rule and reason of our Author.

44.E.3.tit.Taile.13.

(m) 18.E.3 39. 7.H.4.16.

Sect. 285.

ITem si terres soyent dones a deux, & a les heirs ô lun de eux, ceo est bone Joynture, & lun ad franktenemẽt, & lauter ad fee simple: Et si celuy que ad le fee deuie, celuy que ad le franktenement auera lentiertie per le suruiuor pur terme ô sa vie. En meisme le manner est, lou tenements sont dones a deux & les heires del corps dun de eux engendrs, lun ad franktenemẽt, & lauter ad fee taile, &c.

ALso if lands be giuen to two and to the heires of one of them, this is a good Ioynture, and the one hath a Freehold, and the orher a fee simple: And if he which hath the fee dieth, he which hath the freehold shal haue the entiertie by suruiuour for terme of his life. In the same manner it is, where tenements bee giuen to the heires of the body of one of them engendred, the one hath a freehold, & the other a fee taile, &c.

CBy this Section, and the (&c.) in the end of it, they are Ioyntenants for life, and the Fee-simple or estate taile is in one of them, and because it is by one and the same conueyance, they are Iointenants, and the Fee simple is not executed to all purposes, as hath been said before.

If a fine bee leuied to two, (n) and to the heires of one of them, by force whereof hee is seised, he that hath fee dieth, and after the Ioyntenant for life dieth, and an estranger abates, in this case the heire may either suppose the fee simple executed, and haue an assise of Mortdauncester, the words of which writ be, Si R. pater fuit seisitus die quo obijt in dominico suo vt de feodo, which cannot bee sayd of him that hath but a remainder expectant vpon an estate for life, but in respect that he is seised of a fee simple, and of a ioynt estate in possession, the words in the writ be true, That he was seised in Dominico suo vt de feodo. Likewise the heire may haue a writ of Right, which also in some sort proues the fee simple executed, or the heire may haue a Scire facias to execute the fine, by which the heire supposeth that

(n) 42.E.3.9.10. 11.H.4.55
31.E.3.Scire Facias 19.
29.H.8.Mord.B.59.
4.E.3.37.
F.N.B.196.& 219.
4.E.3.Itinere Derby.
24.E.3.70.

that the fee was not executed, or hee may maintaine a Writ of Intrusion where the heire maketh the like supposition, and shall terme it a Remainder. And yet when land is giuen to two and to the heires of one of them, he in the remainder cannot grant away his fee simple, as hath beene sayd.

Sect. 286.

¶ *Claimer riens per discent de son compaignion, &c.* By which (&c.) is implied, That so it is if one Ioyntenant acknowledge a Recognisance or a Statute, or suffreth a iudgment in an action of Debt, &c. and dieth before execution had, it shall not bee executed afterwards. But if execution be sued in the life of the Conusor, it shal bind the suruiuor, and it is further implied, That both in the case of the Charge and of the Recognisance, statute, and iudgement, if he that chargeth, &c. suruiue, it is good for euer.

F.N.B.204.E.287. 7.H.6.2. 13.H.7.22. 10 E.3.34. 17.R.2.tit. Charge 15. 5.H.5.8. *Vide Sect.* 289.

And so it is (o) if a man bee possessed of certain lands for term of yeares in the right of his wife, and granteth a Rent charge, and dieth, the wife shall auoyd the charge, but if the husband had suruiued, the charge is good during the terme.

(o) 9.H.6.52.

If a Villeine purchase lands, and bind himselfe in a Recognisance, if the Lord enter before execution, the Lord shall auoyd the same, as it hath been sayd.

(p) 8.E.3.tit. Execution Statham.

But otherwise it is if he had made a Lease for yeares, for the reason that Littleton here perfecteth in this Section.

If two Ioyntenants bee of a terme, (q) and the one of them grant to I.S. that if

(q) 14.H.8.22. Pl. Com. 263.b. in Dame Hales Case.

¶ Item si deux ioyntenaunts sont seisies destate en Fee simple, & lun graunt vn rent charge per son fait a vn auter hors de ceo, que a luy affiert, en cest case durant la vie le Grantor, le rent charge est effectuall: Mes apres son decesse l' grant de le rent charge ẽ void, quant a charger la tre, car celuy que ad la terre per le suruiuor tiendra tout la terre discharge. Et la cause est, pur ceo que celuy que suruesquist clayma & ad la tre per le suruiuor, & nemy ad, ne poet de ceo claymer rien per discent de son compaignion, &c. Mes autrement est de Parceners, car si soient deux Parceners des tenements en fee simple, et deuant ascun partition fait, lun charge ceo que a luy affiert per son Fait, dun rent charge, &c. et puis morust sans issue, per que ceo que a luy affiert discẽd a lauter Parcener, en cest case lauter Parcener tiendra la Terre charge, &c. pur ceo que il vient a cel moitie per discent come heire, &c.

ALso if two Ioyntenants be seised of an estate in Fee simple, and the one graunts a Rent-charge by his Deed to another out of that which belongeth to him: in this case during the life of the Grantor, the Rent charge is effectuall, but after his decease the grant of the Rent charge is voyd, as to charge the land, for hee which hath the land by suruiuor, shal hold the whole land discharged. And the cause is, for that he which suruiueth claimeth and hath the land by the suruiuor, and hath not nor can claime any thing by discent from his companion, &c. But otherwise it is of Parceners, for if there be two Parceners of Tenements in Fee simple, & before any partitiõ made the one chargeth that which to her belongeth by hir Deed, with a Rent charge, &c. & after dieth without issue, by which that which belongeth to her discends to the other parcener, in this case the other parcener shall hold the land charged &c. because she came to this moity by discẽt, as heir, &c.

if he pay to him ten pound before Michaelmasse, that then he shall haue his terme, the Grantor dyeth before the day, I. S. payes the summe to his Executors at the day, yet hee shall not haue the tearme, but the Survivor shall hold place, for it was but in nature of a communication, but if he had made a Lease for yeares to beginne at Michaelmasse, it should haue bound the Survivor.

And where Littleton putteth the case of a Rent charge, It is so likewise implyed, that if one Ioyntenant granteth a Common of Pasture, or of Turbary, or of Estouers, or a Corodie or such like out of his part, or a way ouer the Land, this shall not bind the Survivour: for it is a maxime in Law, that Ius accrescendi præfertur oneribus, and there is another maxime, that Alienatio rei præfertur iuri accrescendi. 45.E.3.13. Vide Sect 289.

If one Ioyntenat in Fee simple be indebted to the King, and dyeth, (r) after his decease no extent shall be made vpon the Land in the hands of the Survivour. (r) 40.Ass.36. 50 Ass 5. F.N.B.149.g. Pl.Com.321.

If a recouery be had against one Ioyntenant who dyeth before execution, the Survivour shall not anoyd this recouery, because that the right of the moitie is bound by it.

If one Ioyntenant in fee, take a Lease for yeares of an estranger by Deed indented and dyeth, the Survivour shall not be bound by the Conclusion, because he claymes aboue it, and not vnder it.

Et la cause est pur ceo que celuy que survesquist clayme & ad la terre per survivor, &c. Here againe Littleton sheweth the reason: and the cause wherefore the Survivour shall not hold the Land charged, is, for that hee claymeth the Land from the first Feoffor, and not by his companion, which is Littletons meaning when he sayth, (that he claymeth by Survivor) For (s) the surviuing Feoffee may pleade a feoffment to himselfe without any mention of his toynt Feoffee. And this is the reason, That if two Ioyntenants bee in fee, and the one maketh a Lease for yeares, reseruing a Rent and dyeth, the surviuing Feoffee (t) shall haue the Reuersion by Survivour, but hee shall not haue the Rent because he claymeth in from the first Feoffor, which is Paramount the Rent. If there be two Ioyntenants in Fee, and the one Ioyntenant granteth a Rent charge out of his part, and after releaseth to his toynt companion and dyeth, he shall hold the Land charged, for that he is out of the reason and cause set downe by Littleton because he claymeth not by Survivor, in as much as the release preuented the same. And of this opinion was Littleton himselfe (u) before the Edition of his Booke. But all men agree that if A. B. and C. be Ioyntenants in fee, and A. chargeth his part, and then releaseth to B. and his heires and dyeth, that the (w) charge is good for euer, because in that case B. cannot be in from the first Feoffor, because he hath a toynt companion at the time of the Release made, and seuerall writs of Præcipe must be brought against them. And albeit the Release of one Ioyntenant to the residue of the Ioyntenants makes no degree in supposition of Law, neyther is there any seuerall estate betweene them, but the estate of him that releaseth is as it were extinguished and drowned in their estate and possession, so as one Præcipe lyeth against them, yet shall they hold the Land charged as is aforesaid. As if tenant for life grant a Rent charge, and after surrendreth his estate to the Lessor, albeit the estate charged be drowned, and the Lessor is not in by him, yet he shall hold it charged. (s) 14.E.4.1.b. 18.E.2. breife 830. 8.E.2. entrie 77. 18.E.3.28. 38.E.3.26. 8.H.6.25. Vide 46.E.3.77. 35.H.6.39. (t) Dyer Mich.2.& 3.Eliz. 187. Lib.1.fol 96. Vide lib.6.fol.78.79. (u) 33.H.6.5.a. 9.Eliz. Dyer 263. (w) 37.H.8 tit. alienation Br.31. 10.E.4.3.b. 40.E.3.41.b. 33.H.6.5. 22.H.6.42.b. per Pole. 35.E.3. release 43. 33.E.3. answere 195. 14.H.8.2.

Mes autrement est de Parceners, Car si sont deux Parceners &c. This is to be intended as well of Parceners by custome as of Parceners by the Common Law, and here is implyed the reason of the diuersitie, for that the Survivor doth clayme aboue the charge, and the heire by discent vnder the charge.

Section 287.

¶ Item si sõt deux ioyntenants des terres en fee simple deins vn burgh, lou les terres & tenemẽts sont deuisables per testament, & si lun de les dits deux ioyntenants deuise ceo que a luy affiert per son

ALso if there bee two Ioyntenants of Land in Fee simple within a Borough, where Lands and Tenements are deuisable by Testament, & if the one of the said two Ioyntenants deuiseth that which to him be-

¶ *Per son testament, &c.* Eyther in writing or nuncupatiue according to the custome.

¶ *Et la cause est pur ceo que nul deuise, poet prender effect mes apres le mort le deuisor & per sa mort tout la terre maintenant deuient per la ley a son compagnion, &c.*

&c. Here both their claymes commence at one instant, and although an Instant. Est enim indiuisibile tempore quod non est tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that, Instans est finis vnius temporis, & Principium alterius. Yet in consideration of Law there is a priorite of time in an instant, as here the Suruiuor is preferred before the deuise, for Littleton sayth, that the cause is that no deuise can take effect till after the death of the Deuisor, and by his death all the land presently commeth by the Law to his companion. Whereby it appeareth, that Littleton by these words, Post mortem & per mortem, though they iumpe at one instant, yet alloweth priorite of time in the instant which hee distinguisheth by per and post. And the reason of this priorite is, that the Suruiuour claymeth by the first Feoffor (as hath bin said) and therefore in iudgement of Law his Title is Paramount, the title of the Deuisee, and consequently the deuise void, and the rule of Law is, that, Ius accrescendi præfertur vltimæ voluntati.

Pl. Com. in Fulmerstons case.

teſtament, &c. & moruſt, ceo deuiſe eſt voide. Et la cauſe eſt pur ceo que nul deuiſe poit prender effect, mes apres la mort le deuiſor, & per ſa mort tout la terre maintenant deuient per la ley a ſon companion, que ſuruesquiſt per le ſuruiuor, le quel il ne claime, ne ad riens en la terre per my le deuiſor, mes en ſon droit demeſne p le ſuruiuor, ſolonque le courſe de ley &c. & pur cel cauſe tiel deuiſe eſt voide. Mes auterment eſt de Parceners ſeiſies des tenements deuiſables en tiel caſe de deuiſe, &c. Cauſa qua ſupra.

longeth by his Teſtament, &c. and dyeth, this deuiſe is voide. And the cauſe is for that no deuiſe can take effect till after the death of the deuiſor: and by his death al the Land preſently commeth by the Law to his companion, which ſuruiueth by the Suruiuor, the which hee doth not clayme, nor hath any thing in the land by the deuiſor, but in his owne right by the ſuruiuor according to the courſe of Law, &c. and for this cauſe ſuch deuiſe is void. But otherwiſe it is of Parceners ſeiſed of Tenements deuiſable in like caſe of deuiſe, &c. *Cauſa qua ſupra.*

Two Feme Ioyntenants of a Leaſe for yeares, one of them taketh husband, and dieth, yet the terme ſhall ſuruiue, for though all Chattels reals are giuen to the husband, if he ſurui: yet the Suruiuor betweene the Ioyntenants is the elder title, and after the marriage the feme continued ſole poſſeſſed, for if the husband dyeth, the feme ſhall haue it, and not the Executors of the husband, but otherwiſe it is of perſonall goods.

1.H.5. execution 108.

If a man be ſeiſed of a houſe, and poſſeſſed of diuers heirelomes, that by cuſtome haue gone with the houſe from heire to heire, and by his will deuiſeth away the heirelomes, this deuiſe is void, for as Littleton here ſaith, the will taketh effect after his death, and by his death, the heirelomes by ancient cuſtome are veſted in the heire, and the Law preferreth the Cuſtome before the Deuiſe. And ſo it is if the Lord ought to haue a Herriot when his Tenant dyeth, and the Tenant deuiſeth away all his goods, yet the Lord ſhall haue his Herriot for the reaſon aforeſaid. And it hath beene anciently ſaid, that the Herriot ſhall be paid before the Mortuarie.

(x) Fleta lib. 2. cap. 50. Bracton lib. 2. fo. 60. Britton fol. 178.

(x) Imprimis autem debet quilibet qui teſtauerit, dominum ſuum de meliore re quam habuerit recognoſcere, & poſtea Eccleſiam de alia meliore, &c. Wherein the Lord is preferred, for that the tenure is of him. This dutie to the Lord is very ancient, for in the Lawes before the Conqueſt it is ſaid, Siue quis in curia, ſiue morte repentina fuerit inteſtat' mortuus, Dominus tamen aullam rerum ſuarum partem (præter eam quæ iure debetur herioti nomine) ſibi aſſumito.

Lamb. fol. 119. 68.

In the Saxon tongue it is called Heregeat, as much to ſay (as I take it) as the Lords beſte, for Here is Lord, and geat is beſte. But let vs returne to Littleton.

¶ *Mes auterment eſt de parceners ſeiſes des tenements deuiſable en tiel caſe, del deuiſe, &c.* Cauſa qua ſupra.

The reaſon is euident, for that there is no Suruiuor betweene Coparceners, but the part of the one is diſcendible, and conſequently may be deuiſed.

Sect.

Section 288.

¶ Tē il ē comūement dit, q̄ chesc̄ iointenāt est seisie de la terr̄ q̄ il tient ioyntment, per my et per tout, et ceo est autant adire, q̄ il est seisie p chescun parcel, et p tout, &c. et ceo est voier, car en chescun parcel, et per chescun parcel, et per touts les terres et tenements il est iointment seisie ouesq̄ son companion.

ALso it is commonly said, that euery ioyntenant is seised of the land which hee holdeth ioyntly *Per my & per tout*, and this is as much to say as he is seised by euery parcel and by the whole, &c. and this is true, for in euery parcell, and by euery parcell, and by all the lands and tenements he is ioyntly seised with his compagnion.

¶ *Item est communemēt dit, &c.* That is, It is the common opinion, and Communis opinio is of good authority in Lawe, A communi obseruantia non est recedendum, which appeareth here by Littleton.

Vid. Sect. 697.

¶ *Per my & per tout.* Et sic totum tenet & nihil tenet, s. totum coniunctim, & nihil per se seperatim. And albeit they are so seised (as for example where there be two ioyntenants in fee) yet to diuers purposes each of them hath but a right to a moity, as to enfeoffe, giue, or demise, or to forfeite or lose by default in a Præcipe. If my villeine (y) and another purchase lands to them two and their heires, I may enter into a moytie.

Vid. Bracton lib. 5 fo. 430. Britton, cap. 35. Fleta, lib. 3. cap. 4. 40. E. 3 40. 18. E. 2. bre 831. 35 H. 6 39. Vid the second part of the Institutes vpon the 6. chapter of the Statute De bigamis. Fleta, lib. 1. cap. 28. 40. Ass. 79. 48. E. 3. 16.

(y) *Vid. 6. E. 3. 4. 7. E. 4. 29. 11. Eliz. Dier. 283*

And where all the ioyntenants ioyne in a feoffment, euery of them in iudgement of Law doe giue but his part. If an Alien and a subiect purchase lands ioyntly, the King vpon office found shall haue but a moitie. And Littleton afterwards in this chapter saith that one ioyntenant hath one moitie in Law, and the other the other moitie. And therefore if two ioyntenants be (z) and both they make a feoffment in fee vpon condition, and that for breach thereof one of them shall enter into the whole, yet he shall enter but into a moitie because no more in iudgement of Law passed from him; and so it is, of a Gift in taile or a Lease for life, &c.

(z) *Pl. Com. in Brownings case, fo.*

Yet euery ioyntenant may warrant the whole, (a) because a man may warrant more then passeth from him

(a) *Vid. the second part of the Institutes vpon the 6 chapter of the Statute of Bigamis.*

If two ioyntenants make a feoffment in fee (b) and one of the Feoffors die, the Feoffee cannot plead a feoffment from the surmiour of the whole, because each of them gaue but his part, but otherwise it is on the part of the Feoffees, as hath beene said before.

(b) *14. E. 4. 5. and the other bookes aboue said.*

And where two ioyntenants be, the one of them (c) may make the other his Bailife of his moitie, and haue an Action of account against him. And ons ioyntenant (d) may let his part for yeares or at will to his companion.

(c) *21. E. 3. 60.*

(d) *11. H. 3. 60. 33.*

If two ioyntenants be of certaine lands, and the one of them by Deede indented (e) bargaineth and selleth the lands, and the other ioyntenant dyeth, and then the Deede is inrolled, there shall passe nothing but the moitie which the bargainer had at the time of the bargaine.

(e) *6. E. 6 tit. Faits in. roll. 9. Br.*

Sect. 289.

¶ Item si deux ioyntenants sont seisies de certain terres en Fee simple, & lun lessa ceo que a luy affiert a vn estranger pur terme de 40. ans, & deuie deuant le term com-

ALso if two Ioyntenants bee seised of certain lands in fee simple, and the one letteth that to her belongeth to a stranger for terme of fortie yeares, and dieth before the

¶ *Per force de mesm' le dit lease, &c.*

By this (&c.) is implied, That where our Author speaketh of Ioyntenants seised in fee, that so it is if two bee seised for life, and one make a Lease to begin presently, or in

(f) *Vid Sect 286. & 660. & Sect. 2.*

in futuro, and dieth, this Leaſe ſhall binde the ſuruiuor, as it hath beene adiudged. (g) And if one Ioyntenant grant veſturam terræ, or herbagium terræ, for yeares, and dieth, this ſhall binde the ſuruiuor, for ſuch a Leſſee hath right in the land. So it is if two Ioyntenants be of a Water, and the one granteth the ſeuerall Piſcarie.

(g) 11.H.4.90. 14.H.8.6. 17.E.4.6.a.9.H.6.52. 21.H.7.29. 14.H.7.4. 18.E.3.Execution 56. 11.El.Dy.285.P.Com.160.a Temps E.1.Aſſ.422.20.H.6 4.7.H.7.13.10.H.7.24.

C. *Lun leſſa.* The one letteth. If two Ioyntenants be of an Aduowſon, and (h) the one preſenteth to the Church, and his Clerke is admitted & inſtituted, this in reſpect of the priuity ſhal not put the other out of poſſeſſion, but if that Ioyntenant that preſenteth dieth, it ſhal ſerue for a title in a Quare impedit brought by the Suruiuor. But yet if one Ioyntenant or Tenant in Cõmon preſent, or if they preſent ſeuerally, the Ordinaries may either admit or refuſe to admit ſuch a Preſentee, vnleſſe they ioyne in preſentation, and after the ſixe moneths hee may in that caſe preſent by Lapſe.

(h) 6.E.3.38,39.52. 7.E.3.20.21. 17.Ed.3.37.b. 22.E.3.9.30.E.3.16. 11.H.4.54. 15.E.3.Dar. preſentment.11.10 E.4.94. 1.H.7.1.b.2.R.3.Quar.imp. 102. 9.El.Dy.259. 36.H.8.Br.Preſent. 27.H.8.fo.11. 5.H.7.8. 6.E.4.10.b.Doct. & Stud. 116.34.H.6.40. 20.E.3. Quar.imp.63.F.N.B.34.V.

But if two or more Coparceners bee, (i) and they cannot agree to preſent, the eldeſt ſhal preſent, and if her ſiſter doth diſturbe her, ſhe ſhall haue a Quare impedit againſt her, and ſo ſhall the Iſſue and the Aſſignee of the eldeſt, and yet he is tenant in Common with the youngeſt. And in the ſame manner the tenant by the Curteſie of the eldeſt ſhall preſent; but if there be foure Coparceners and the eldeſt and the ſecond preſent, and the other two preſent ioyntly or ſeuerally, the Ordinary may refuſe them all, for the eldeſt did not preſent alone but ſhee and one other of her ſiſters. But now let vs returne to Littleton.

(i) Bract.li.4.fo.238.245. 247.Brit.fo.223.45.Edw.3. Fines 41.18.E.2.Quar.imp. 176.38.H.6.9.19.E.3.ib. 59.5.H.5.10.F.N.B.34.V

mence, ou deins ſ' ſme, en ceſt caſe apres ſon deceaſe le Leſſee poet enter et occupier la moitie a luy Leſſe durant le terme, &c. coment que le Leſſee nauoit vnqs poſſeſſion de ceo en la vie le Leſſor, per force de meſme le leaſe, &c. Et le diuerſitie perenter le caſe de grant de Rent-charge auantdit, et ceſt caſe eſt ceo, car en grãt de Rent charge p̃ ioyntenaunt, &c. les Tenemẽts demurgent touts foits come ils fueront adeuant, ſans ceo que aſcun ad aſcun droyt dauer aſcun parcell de les tenements forſque eux meſmes, et les Tenements ſont en tiel plyte, come ils fueront deuant le charge, &c. Mes ou Leaſe eſt fayt per vn Ioyntenant a vn auter per terme des ans, &c. maintenaunt per force de le Leaſe le leſſee ad droit en meſme la terre, ceſtaſcauoir de tout ceo que a ſon leſſour affiert, et dauer ceo per force de meſme le Leaſe durant ſon terme. Et ceo eſt la diuerſitie.

term beginneth, or within the terme, in this caſe after his deceaſe the Leſſee may enter and occupy the moitie let vnto him during the terme, &c. although the leſſee had neuer the poſſeſſion therof in the life of the Leſſor, by force of the ſame leaſe, &c. And the diuerſity between the caſe of a grant of a Rent charge aforeſayd, and this caſe, is this, for in the grant of a Rent charge by a Ioyntenant, &c. the tenements remaine alwayes as they were before, without this that any hath any right to haue any parcel of the tenements but they themſelues, and the Tenements are in the ſame plight as they were before the charge, &c. But where a leaſe is made by a Ioyntenant to another for terme of yeares, &c. preſently by force of the Leaſe, the Leſſee hath right in the ſame Land, (*videlicet*) of all that which to the Leſſour belongeth, and to haue this by force of the ſame Leaſe, during his terme. And this is the diuerſitie.

Sect. 290.

¶ Tẽ ioyntenãts (ils voilent) poient faire partition enter eux et la partition est assets bon, mes de ceo faire ils ne serront compels per la ley. Mes ils voylent faire partition de lour propre volunt & agreement, le partition estoiera en sa force.

ALso ioyntenants (if they will) may make partition betweene them, and the partition is good enough, but they shall not bee compelled to doe this by the Law, but if they will make partition of their own will and agreement, the partition shal stand in force.

¶ *Poient faire partition.* But this partition must be (k) by Deed as hath beene said before. But ioyntenants for yeares may (l) make partition without Deed.

(k) *Vi. Sect.* 259. 318.

(l) 18. *El. Dyer* 350.

¶ *Ils ne serra compell.* This is true regularly, but by the custome of some Cities and Borroughs one ioyntenant or tenant in Common may compell his companion by Writ of partition grounded upon the custome to make partition. But since Littleton wrote ioyntenants and Tenants in common generally are compellable to make partition by Writ framed upon the Statutes (m) of 31. & 32. H. 8. as before hath beene said. And albeit they be now compellable to make partition, yet seeing they are compellable by Writ, they must pursue the Statutes and cannot make partition by Parol, for that remaines at the Common Law. And by Littletons Authority herein it seemeth to me that if one ioyntenant or tenant in Common disseise another, and the Disseisee bring his Assise for the moitie, that in this case, though the Plaintife prayeth it, yet no iudgement shall be giuen to hold in seueralty, for then at the Common Law there might haue beene by compulsion of Law a partition betweene ioyntenants and tenants in Common, and by rule of Law the Plaintife must haue iudgement according to his pleint or demaund.

F.N.B. 62. *b.*

(m) 31. *H.* 8. *ca.* 1. 32. *H.* 8. *ca.* 32. *Vi. Sect.* 264. 247. 252. *Mich.* 16. & 17 *El.* 340. *Inter Harris & Eden adiudge. acc.* 18. *El. Dyer* 350. *b. Vi before in the Chapter of Partition, many bookes cited concerning this matter.* 3. *E.* 3. 48. *F.N.B.* 9. *b.* 7. *Ass.* 10. 7. *E.* 3. 29. 10. *Ass.* 17. 10. *E.* 3. 40. 43. 12. *Ass.* 13. 17. 12. *E.* 3. *iudgement* 162. 20. *E* 3. *Ass.* 62. 28. *Ass.* 35. 23. *Ass.* 10. 7. *H.* 6. 4. 19. *H.* 6. 45. 3. *E.* 4. 10. *Vid. Sect.* 247. *Britt. fo.* 112. *Lib.* 6 *fo.* 12. & 13. *Morrices Case.*

If two Ioyntenants be (n) of land with Warranty, and they make partition by writing the Warranty is distroyed, but if they make partition by Writ of partition upon the Statute, the Warrantie remaines because they are compellable thereunto.

(n) 29. *E.* 3 *Iit. Gart.*

Sect. 291.

¶ Item si vn ioynt estate soit fait de fre a le baron & a sa feme & a vn tierce person, en ceo cas le baron et sa feme nont en en ley en lour droit forsq; le moity, &c. et le tierce person auera tant come le baron et sa feme ont, s. lauter moity, &c. Et la cause est, pur ceo que le baron et sa feme ne sont forsque vn person en

ALso if a ioynt estate be made of land to husband and wife, and to a third person, in this case the husbãd & wife haue in law in their right but the moitie, and the third person shall haue asmuch as the husband and wife, *viz.* the other moity, &c. And the cause is, for that the husband and wife are but one person in

¶ *Le baron & sa feme nont en ley en lour droit forsque le moity, &c.* William Ocle and Ioan his wife (o) purchased lands to them two and their heires, after William Ocle was attainted of high treason for the murther of the Kings father E. 2. and was executed, Ioan his wife survived him, E. 3. granted the lands to Stephen de Bitterly and his heires. Iohn Hawkins the heire of the said Ioan in a Petition to the King discloseth this whole matter, and upon a Scire facias against the Patentee hath iudgement to recouer the lands,

(o) *Mich.* 33. *E* 3. *Coram Rege Salop. in Thesaur.*

Vi.Sect. 665.

lands, for the reason here yeelded by our Author.

But if an estate be made to a man and a woman and their heires before marriage, and after they marry, the husband and wife haue moyties betweene them, which is implied in these words of our Author, Baron & la feme.

(p) Bract.li.5.fo.416. 20.H.3.Diuont.52. Lib.4.fo.68. Tolers case. Pl.Com.483. Nichols case.

¶ *Forsque vn person en Ley.* Bract. saith(p) vir & vxor sunt quasi vnica psona, quia caro vna & sanguis vnus. It hath bin said, that if a reuersion bee granted to a man and a woman and their heires, and before attornment they entermarrie, and then attornement is made, That the husband and wife shall haue no moities, in this case no more than if a Charter of Feoffement be made to a man and a woman, with a Letter of Atturney to make liuery, they entermarrie, and then Liuerie is made secundum formam chartæ, in which case it is said, that they haue no moities. But certain it is, that if a feoffment were made before the stat. of 27. H. 8. of vses to the vse of a man(q) & a womã, & their heires, and they entermarrie, and then the Statute is made, if the husband alien it is good for a moitie, for the Statute executes the possession according to such qualitie, manner, forme, and condition, as they had in the vse, so as though it rest during the couerture, yet the Act of Parliament executes seuerall moities in them, seeing they had seuerall moities in the vse.

(q) 4.Mar.Dyer 149. 3.Mar.Dyer 122. 29.H.8.Dyer 32.

(r) 4.Ass.p.7.

If an estate be made to a Villeine and his wife (r) being free, and to their heires, albeit they haue seuerall capacities, viz. the Villeine to purchase for the benefit of the Lord and the wife for her owne, yet if the Lord of the Villeine enter, and the wife suruiueth her husband, she shall inioy the whole land, because there be no moities betweene them.

A man makes a Lease to A. and to a Baron and Feme, viz. to A. for life, to the husband in taile, and to the Feme for yeares, in this case it is sayd, That each of them hath a third part in respect of the seueralties of their estates.

(s) Pl.Com. 483. Nichols case

If a Feoffement be made to a man and a woman and their heires with warrantie,(s) and they entermarrie and after are impleaded and vouch and recouer in value, moities shal not be betweene them, for though they were sole when the warrantie was made, notwithstanding at the time when they recouered and had execution, they were husband and wife, in which time they cannot take by moities.

11.H.7.

Albeit Baron and Feme (as Littleton here saith) be one person in Law, so as neither of them can giue any estate or interest to the other, yet if a Charter of Feoffement be made to the wife, the husband as Atturney to the Feoffor may make liuerie to the wife, and so a Feme couert that hath power to sell land by will, may sell the same to her husband, because they are but Instruments for others, and the state passeth from the Feoffee or Deuisee.

(t) 11.E.3.Cui in vita 9. 26.E.3.ibid. 36.E.3.ibid.20. 35.Ass.Pl.15. 31.H.6.tit.Ens.Conseable 54 19.H.6.45. F.N.B.193.k.

If a husband, wife, and a third person purchase lands to them and their heires, (t) and the husband before the Statute of 32.H.8.cap.1. had aliened the whole land to a stranger in fee, and died, the wife and the other Ioyntenant were Ioyntenants of the right, and if the wife had

¶ *Luis serra dit del matter touchant ioyntenancie, en le chapter de Tenants en common, et tenant per Elegit, et tenant per statute Merchant.*

ley, et sont en semblable case, sicome estate soit fait a deux ioyntenants, ou lun ad per force de ioyntur̃ lun moitie en ley, & lauter lauter moitie, &c. En mesme le maner est lou estate est fait a le baron et a sa feme, et as auters deux homes, en tiel cas l baron et sa fem̃ nont forqz la tierce part, et les auters deux homes les auters deux parts, &c. Causa qua supra.

More shall bee said of the matter touching ioyntenancy in the chapter of Tenants in Common and tenant by Elegit, and tenant by Statute Merchant.

law and are in like case as if an estate bee made to two ioyntenants, where the one hath by force of the ioynture the one moytie in law, and the other the other moitie, &c. In the same manner it is where an estate is made to the husband and wife, and to two other men, in this case the husband and wife haue but the third part, and the other two men the other two parts, &c. *Causa qua supra.*

had died, the other Ioyntenant should haue had the whole right by suruiuor, for that they might haue ioyned in a Writ of Right, and the discontinuance should not haue barred the entrie of the suruiuor, for that he claimed not vnder the discontinuance, but by title paramount aboue the same, by the first feoffement, which is worthie of obseruation. But if the husband had made a feoffement in fee but of the moitie, and he and his wife had died, their moitie should not haue suruiued to the other.

And for the better vnderstanding of this diuersitie diuers things are worthy of obseruation.

First, That a right of action & a right of entrie may stand in Ioynture, for at the Common law the alienation of the husband was a discontinuance to the wife of the one moitie, and a disseisin of the other, so as after the death of the husband, the wife hath a right of Action to the one moitie, and the other Ioyntenant a right of entrie into the other, but they are Ioyntenants of the right, because they may ioyne in a Writ of Right. *Vi. Sect. 302.*

Secondly, That a right of Action or a bare right of entrie cannot stand in ioynture with a Freehold or Inheritance in possession, and therefore if the husband make a feoffement of the moitie, this was a discontinuance of that moitie, * and the other Ioyntenant remained in possession of the Freehold and Inheritance of the other moitie, which for the time was a seuerance of the Ioynture, and so are all the bookes which seemed to varie amongst themselues, cleerely reconciled. ** Vi. the Statute of 32. H 8.c. it is no discontinuance at this day.*

If two Ioyntenants be of a rent, and the one of them disseise the Tenant of the Land, (u) this is a seuerance of the Ioynture for a time, for the moitie of the rent is suspended by vnitie of possession, and therefore cannot stand in Ioynture with the other moitie in possession. And this is to be obserued, That there shall neuer be any suruiuor, vnlesse the thing be in ioynture at the instant of the death of him that first dieth: for the rule is, Nihil de re accrescit ei qui nihil in re quando ius accresceret habet. (u) *Pl. Com. 419 m. Bratchbridges case.*

Also if a man deuiseth lands to two, to haue and to hold to the one for life, and the other for yeares, they are no Ioyntenants, for a state of Freehold cannot stand in Ioynture with a terme for yeares: and a reuersion vpon a freehold cannot stand in ioynture with a Freehold and Inheritance in possession, as shall be sayd in the next Chapter. Neither can a Seisin in the right of a politique capacitie, stand in Ioynture with Seisin in a naturall capacitie, as shall be sayd hereafter. *46. E. 3, 21. 19. H 6. 45. 37. H. 8. 8. 3. 6. 4. 10.*

If two Femes be ioyntly seised, and they take Barons, and the Barons ioyne in an alienation and die, the wiues are Ioyntenants of the right, and may ioyne in a Writ of Right, and yet they may haue seuerall Writs of Cui in vita at their election, but when they haue recouered in those seuerall Writs, they shall be Ioyntenants againe. But if the Barons had aliened seuerally, this had beene a seuerance of the Ioynture for a time, for the reason aboue said.

If two Ioyntenants, the one for life, and the other in fee, lose by default, the one shall haue a Writ of Right, and the other a Quod ei deforceat, and yet when they haue seuerally recouered, they shall be Ioyntenants againe. So it is if two Ioyntenants be disseised, and an Assise is brought, and the one is summoned and seuered, and the other recouer the moitie, and after another Assise is brought, and he that recouereth is summoned and seuered, and the other recouer, albeit they seuerally recouer, yet they are Ioyntenants againe.

And in all cases where the Ioyntenants pursue one ioynt remedie, and the one is summoned and seuered, and the other recouer, he that is summoned and seuered shall enter with him: but where their remedies be seuerall, there the one shall not enter with the other, till both haue recouered, and the same Law is of Coparceners. If lands (w) be demised for life, the remainder to the right heires, of I.S. and of I.N. I.S. hath Issue and dieth, and after I.N. hath Issue and dieth, the Issues are not Ioyntenants, because the one moitie vested at one time, and the other moitie vested at another time. And yet in some cases there may be Ioyntenants, and yet the estate may vest in them at seuerall times. *Vid. Lit. cap. Remitter the last case. 10. H 6. 10. 31 H 6. tit. Entre congeable 46. E. 3. 21. b. 3. E. 4. 10. 37 H. 6. 8.* (w) *24. E. 3. 29. 18. E. 3. 38. E. 3.*

If a man (x) make a Feoffement in fee to the vse of himselfe and of such wife as hee should afterwards marrie, for terme of their liues, and after he taketh wife, they are Ioyntenants, and yet they come to their estates at seuerall times. (x) *17. El. Dyer Brents case.*

And so it is if I disseise one to the vse of two, and the one agrees at one time, and the other at another, yet they are Ioyntenants.

In this Section are three (&c.) the first and second are at large explained before, the last is intended where more parties take than three.

Chap. 4.

Chap.4. Of Tenants in Common. Sect.292.

Tenants en Common ſont ceux, que ont terres ou tenemẽts en Fee ſimple, Fee taile, ou pur terme de vie, &c. les queux ont tielx terres ou Tenements per ſeuerall titles, & nemy per ioynt title, et nul de eux ſcauoit de ceo ſon ſeuerall, mes ils doient per la Ley occupier tiels terres ou tenements en commõ, & pro indiuiſo a prender les profits en common. Et pur ceo que ils auiendront a tielx terres ou tenements per ſeuerall titles et nemy per vn ioynt title, et lour occupation et poſſeſſion ſerra p la ley perenter eux en common, ils ſont appels Tenaunts en common. Sicome vn home enfeoffa deux Joyntenants en fee, et lun de eux alien ceo que a luy affiert a vn auter en fee, ore le alienee et lauter Joyntenant ſont Tenants en Common, pur ceo que ils ſont eins en tiels Tenements per ſeuerall titles, car lalienee vient eins en la moitie per la feoffement dun des Joyntenants et lauter Joyntenant ad lauter moitie per force de l primer Feoffement fait a luy, et a ſon companion, &c. Et iſſint ils ſont eins per ſeuerall titles, ceſtaſcauoir, per ſeueral Feoffements, &c.

Tenants in Common are they which haue Lands or Tenements in Fee-ſimple, Fee taile, or for terme of life, &c. and they haue ſuch Lands or Tenements by ſeuerall Titles, and not by a joynt title, and none of them know of this his ſeuerall, but they ought by the Law to occupie theſe Lands or Tenements in common, and *pro indiuiſo*, to take the profits in Common. And becauſe they come to ſuch Lands or Tenements by ſeuerall titles, and not by one ioynt title, and their occupation and poſſeſſion ſhall be by Law betweene them in Common, they are called Tenants in Common. As if a man enfeoffe two Ioynetenants in Fee, and the one of them alien that which to him belongeth, to another in Fee, now the Alienee and the other Ioyntenant are Tenants in Common, becauſe they are in in ſuch teneméts by ſeuerall titles, for the Alienee commeth to the moitie by the Feoffement of one of the Ioyntenaunts, and the other Ioyntenaunt hath the other moitie by force of the firſt feoffement made to him and to his Companion, &c. And ſo they are in by ſeuerall Titles, that is to ſay, by ſeuerall Feoffements, &c.

Plot.M.3.ca.4. Littleton hauing ſpoken of Parceners which are onely by diſcent, and of Joyntenants which are onely by purchaſe, and by ioynt title, ſpeaketh now of Tenants in Common, which may be by three meanes, viz. by Purchaſe, by Diſcent, or by Preſcription, as hereafter in this Chapter ſhall appeare.

Or

¶ *Ou pur terme de vie, &c.* Here (&c.) implyeth pur terme dauter vie, or for tearme of yeares, or for any other fixed Inheritance in the Land.

And here it appeareth, that the essentiall difference betweene Joyntenants and Tenants in Common, is that Joyntenants haue the Lands by one joynt Title, and in one Right, and Tenants in common by seuerall Titles, or by one Title and by seuerall Rights, which is the reason that Joyntenants haue one joynt Freehold, and Tenant in Common haue seuerall Freeholds, only this propertie is common to them both, viz. that their occupation is indeuided, and neyther of them knoweth his part in seuerall. *Vide Sect. 296.*

The Example that Littleton putteth in this Section is perspicuous, and needeth no explication.

Sect. 293.

¶ CEt est ascauoir, que quant il est dit en ascun Lieur, or home est seisie ẽ fee sauns pluis dire, il serra entendue en fee simple, car il ne serra entendue per tiel paroll (en fee) que home est seisie en fee tayle, sinon que soit mis a ceo tiel addition, fee tayle, &c.

AND it is to bee vnderstood, that when it is said in any Booke, that a man is seised in fee, without more saying, it shall bee intended in fee simple, for it shall not bee intended by this word (in fee) that a man is seised in fee tayle vnlesse there be added to it this addition fee tayle, &c.

¶ This is euident and secundum excellentiam, it shall bee taken for the highest and best fee, and that is fee simple. *Vide dicunt. Sect 99.*

¶ *Addition in fee tayle, &c.* Here is implyed a maxime in Law, viz. that Additio probat minoritatem, as it is vulgarly said, the younger sonne giueth the difference.

Sect. 294.

¶ ITem si 3. joyntenãts sont, & vn de eux alien ceo que a luy affiert a vn auter home en fee, en cest cas lalienee est tenant en common ouesque les auters deux joyntenants, mes vncore les auters 2. joyntenants sont seisies ds deux parts joyntment que remayne, & de ceux deux parts le suruiuor enter eux deux tient lieu, &c.

ALso if three Ioyntenants bee, and one of them alien that which to him belongeth to another man in fee. In this case the alienee is Tenant in common with the other two Ioyntenants, but yet the other two Ioyntenants are seised of the two parts which remain ioyntly, and of these two parts the Suruiuor betweene them two holdeth place, &c.

¶ This needeth no explication, only the (&c.) in the end of this Section implyeth that the same Law is where there be more Joyntenants then three.

Section 295.

¶ Item si soient deux Joyntenants en fee, & lun dona ceo que a luy affiert a vn auter en le tayle, & lauter done ceo que a luy affiert a vn auter en le tayle, les donees sont tenants en common, &c.

ALso if there bee two Ioyntenants in fee, and the one giueth that to him belongeth to another in tayle, and the other giueth that to him belongs to another in tayle, the Donees are Tenants in common, &c.

vide Sect. 300.

¶ The (&c.) in the end of this Section implyeth, that so it is when a Lease for life, or pur auter vie is made, for in that case also the Lessees are Tenants in common.

Sect. 296.

¶ *Si terres sõt dones a 2. homes, &c.* Of this sufficient hath been spoken in the Chapter (a) of Joyntenants.

(a) *Sect. 283.*

¶ Mes si terres sont dones a 2. homes, & a les heires de lour deux corps engendres, les donees ount ioint estate pur terme de lour vies, & si chescun de eux ad issue & deux, lour issues tiendront en common, &c. Mes si terres sont dones, a deux Abbes, sicome al Abbe de Westminster, & al Abbe de S. Albon, a auer & tener a eux & a lour successors, ẽ cest cas ils ont maintenant al commencement estate en common, & nemy ioynt estate. Et la cause est, pur ceo q̃ chescun Abbe, ou auter Soueraigne, de meason de Religion, deuant que il fuit fait Abbe, ou Soueraigne, &c. il fuit forsq; come mort person en ley, et quant il est fait Abbe, il est come vn home person able en ley tantsolemẽt a purchaser et auer terres ou tenements, ou auters

BVt if lãds be giuẽ to two men, and to the heires of their two bodies begotten, the Donees haue a ioint Estate for tearme of their liues, and if each of them hath issue and die, their issues shall hold in Common, &c. But if lands be giuen to two Abbots, as to the Abbot of *Westminster*, and to the Abbot of Saint *Albons*, to haue and to hold to them and to their Successors. In this case they haue presently at the beginning an estate in Common, and not a ioynt estate. And the reason is for that euery Abbot or other Soueraigne of a house of religion, before that hee was made Abbot or Soueraigne, &c. was but as a dead person in law, and when he is made Abbot, he is as a mã personable in Law only to purchase and haue lands or tenements or other things to the vse of his House, and

(b) 7.H.7.9.b.16.H.7.15.b. 3.H.7.11. 10.E.4.16.b. 5.H.7.25. 18.E.27. 49.E.3.25.b. *Vide Sect.200.*

The (&c.) in the end of this Section implyeth, that so it is of any (c) body Politique or Corporate bee they regular, as dead persons in law (whereof our Authour here speaketh) or Seculer: as if

(c) 4.H.7.45. 18.E.3.27.b.

anters choſes al vſe de ſa meaſon, et nemy a ſon preſper vſe, come auter ſeculer home poit, et pur ceo al commencement de lour purchaſe ils ſont tenants en common, et ſi lun de eux deuie, Labbe que ſuruiſquiſt nauera my tout per le Suruiuour, mes le ſucceſſor de Labbe que mozuſt tiendza le moitie en common oue Labbe q̄ ſuruiſquiſt, &c.

not to his owne proper vſe, as another ſecular man may, and therefore at the beginning of their purchaſe they are tenants in common, and if one of them die, the Abbot which ſuruiueth ſhall not haue the wholeby ſuruiuor, but the Succeſſor of the Abbot which is dead, ſhall hold the moitie in common with the Abbot that ſuruiueth, &c.

lands be giuen to two Biſhops, to haue and to hold to them two and their Succeſſours: Albeit the Biſhoppes were neuer any dead perſons in Law, but alwayes of capacitie to take, yet ſeeing they take this Purchaſe in their politique Capacitie, as Biſhops, they are preſently Tenants in Common, becauſe they are ſeiſed in ſeuerall rights, for the one Biſhop is ſeiſed in the right of his Biſhoprieke of the one moitie, and the other is ſeiſed in the right of his Biſhoprieke of the other moitie, and ſo by ſeuerall Titles and in ſeuerall Capacities, whereas Joyntenants ought to haue it in one and the ſame right and Capacitie, and by one and the ſame ioynt Title. The like Law is if Lands be giuen to two Parſons and their Succeſſors or to any other ſuch like Eccleſiaſticall bodies Politique or Incorporate as hath beene ſaid.

If a Corodie be granted to two men and their heires, in this caſe becauſe the Corodie is incertaine and cannot be ſeuered, it ſhall amount to a ſeuerall grant to each of them one Corodie, for the perſons be ſeuerall, and the Corodie is perſonall.

Sect. 297.

Item ſi terres ſoient dones a vn Abbe, et a vn Secular home, A auer et teñ a eux, s. al Abbe, et a ſes ſucceſſors, et al Secular home a luy et a ſes heires, donques ils ount eſtate en cõmon, Cauſa qua ſupra.

ALſo if lands bee giuen to an Abbot and a Secular man, to haue and to hold to them, *viz.* to the Abbot and his Succeſſors, and to the Secular man, to him and to his heires, They haue an eſtate in common, *Cauſa qua ſupra.*

AND ſo it is if lands be giuen to the Parſon of Dale, and to a Lay man, to haue and to hold to them, that is to ſay, to the Parſon and his Succeſſors, and to the Lay man and his heires, they are preſently Tenants in Common for the cauſes aboueſaid. So of a Biſhop, &c. Et ſic de ſimilibus.

F.N.B.49.I. 16.E.3.Voindre in action 27. 16. ff.p.1. 2.R.3.16.7.H.7.9. 13.H.9.14.

If Lands bee giuen to the King and to a Subiect. To haue and to hold to them and to their heires, yet they are Tenants in Common, and not Joyntenants, for the King is not ſeiſed in his naturall Capacitie, but in his Royall and Politique Capacitie, in iure Coronæ, which cannot ſtand in Joynture with the ſeiſin of the ſubiect in his naturall Capacitie. So likewiſe if there bee two Joyntenants, and the Crowne diſcend to one of them the Joynture is ſeuered, and they are become Tenants in common. But if Lands bee giuen to A. de B. Biſhop of N. and to a Secular man to haue and to hold to them two, and to their heires. In this caſe they are Joyntenants, for each of them take the lands in their naturall Capacitie.

Pl.Com. in Seig. Barkley caſe fol.

If lands be giuen to Iohn Biſhop of Norwich and his Succeſſors, and to Iohn Overall Doctor of Diuinitie and his heires being one and the ſame perſon, he is Tenant in Common (d) with himſelfe. But our Authors rules doe not hold in Chattels, Reals or Perſonals; for if a Leaſe for yeares be made, or a ward granted to an Abbot and a Secular man, or to a Biſhop and Secular man, or if goods be granted to them, they are Joyntenants, becauſe they take not in their Politique Capacitie.

(d) 13.H.8.14. 16.H.7.15. 9.H.6.25. 45.E.3.25.

Sect. 298.

AND the reason is, because they haue seuerall Freeholds and an occupation Pro indiuiso.

Here is to be obserued that the Habendum doth seuer the premisses that, Prima facie seemed to be ioynt, for an expresse estate controles an implyed estate, as hath beene said.

ITem si terres soient dones a deux a auer, et tener, s. lun moity a lun et a ses heires, et lauter moity a lauter et a ses heires, ils sont tenants en common.

ALso if lands be giuen to two to haue and to hold, s. the one moitie to the one and to his heires, and the other moitie to the other, and to his heires, they are tenants in common.

Section 299.

AND the like Law is, if the feoffment bee made of a third part or a fourth part, &c. And if there be an Aduowson appendant, they are also Tenants in common of the Aduowson. And albeit it is said that such a feoffment of a moity or third part, &c. is not good without writing, for that (as they say) a man cannot create an vncertain estate in land by Parol, yet is the Law cleere that such a feoffment is good by Parol without writing, and such an vncertaine estate shall passe by Liuery, and so it appeareth in our bookes.

21.Ass.Pl.16.

45.E.3.12. 44.Ass.11.

21.E.4.22.b.

ITem si home seisie de certain terres enfeoffa vn auter de le moitie de mesme la terre sans ascun parlance de assignment ou limitation de mesme le moitie ẽ seuenalty al temps del feoffment, donqs le feoffee & le feoffor tiendront lour parts de la terre en common.

ALso if a man seised of certaine lands infeoffe another of the moitie of the same land without any speech of assignement or limitation of the same moitie in seuenaltie at the time of the feoffment, then the Feoffee and the Feoffor shall hold their parts of the land in common.

21.E.4.22.b.

5.E.3.23.67.
Temps E.1.Feoffments 115.
34.E.1.quar.imped.179.
10.Eliz.Dier.28.
22.E.3.6.Feoffments 116.
6.E.3 56 39.E.3.38.
9.E.3.16. 17.E.3.3.
18.E.3.43. 43.E.3.26.
23.Ass.33.H.6.5.a.

If a Verdict finde that a man hath Duas partes manerij, &c. in tres partes diuisas;) this shall not be intended to be in Common, but if the verdict be in tres partes diuidendas, then it seemeth that they are Tenants in common by the intendment of the Verdict.

But if a man be seised of a Mannor whereunto an Aduowson is appendant, and maketh a feoffment of three acres parcell of the Mannor together with the Aduowson to two. To haue and to hold the one moitie together with the moity of the Aduowson to the one and his heires, and the other moity together with the other moitie of the Aduowson to the other and his heires this cannot be good without Deed, for the Feoffor cannot anner the Aduowson to these three acres, and disaner it from the rest of the Mannor without Deed.

Section 300.

CEt est ascauoir, que en mesm̃ le maner come est auantdit de tenants en common, de terres ou tenẽts en fee simple, ou en fee taile, en mesme le maner poit estre de

AND it is to bee vnderstood that in the same maner as is aforesaid of tenants in common of lands or tenements in fee simple, or in fee taile, in the same

de tenants a terme de vie. Sicom deux ioyntenants sont en fee, & lū lessa a vn home ceo que a luy affiert pur terme de vie, et lauter ioyntenant lessa ceo que a luy affiert a vn auter pur terme de vie, &c. les deux lessees sont tenants en common pur lour vies, &c.

manner may it be of tenants for terme of life. As if two ioyntenants bee in fee, and the one letteth to one man that which to him belongeth for terme of life, and the other ioyntenant letteth that which to him belongeth to another for terme of life, &c. the said two lessees are tenants in cōmon for their liues, &c.

Vid. Sect. 295. where this is sufficiently explaned before.

Sect. 301.

¶ Item si hom lessa terres a deux homes pur terme de lour vies, & lun granta tout son estate de ceo que a luy affiert a vn auter, donqs lauter tenant a terme de vie, et celuy a q̄ le graunt est fait sont tenants en common, durant le temps que ambideux les lessees sont ē vie.

ALso if a man let lands to two men for terme of their liues, & the one grants all his estate of that which belongeth to him to another, then the other tenant for terme of life, and hee to whom the grant is made are tenants in common during the time that both the lessees be aliue.

¶ Et memorandū, que en touts auters tiels cases, coment que ne sont icy expressement moues ou specifies, si sont en semblable reason, sont en semblable ley.

¶ And *memorandum*, that in all other such like cases although it bee not here expresly moued or specified if they bee in like reason, they are in the like law.

¶ And so it is if lands be letten to two for terme of their liues, Et eorum alterius diuti viuenti, and one of them granteth his part to a stranger whereby the ioynture is secured, and dyeth, here shall be no suruiuour, but the Lessor shall enter into the moity, and the suruiuour shall haue no aduantage of these words Et eorum alterius diutius viuenti for two causes. First, for that the ioynture is seuered. Secondly, for that these words are no more then the Common Law would haue implyed without them, and Expressio eorum quæ tacitè insunt nihil operatur. Hereby it appeareth that in case of Leases for life it is more beneficiall for the Lessor to haue the ioynture seuered then to haue it continue. 30. Ass. 18

¶ *Si soient en semblable reason sont en semblable ley.* Here Littleton citeth one of the maximes of the Common Law, That whersoeuer there is the like reason, there is the like Law. Vbi eadem ratio, ibi idem jus, or Vbi eadem ratio, ibi idem jus esse debet, for Ratio est anima legis. And therefore Ratio potest allegari deficiente lege. But it must be Ratio vera & legalis & non apparens. And here it appeareth that Argumentum à simili is good in Law, Sed similitudo legalis est casuum diuersorum inter se collatorum similis ratio, quod in vno similium valet, valebit in altero, dissimilium dissimilis est ratio. Vid. Sect. 1.

Sect. 302.

¶ *Si deux Ioyntenants en fee, &c.*

This needeth no explanation.

¶ *Et sur ceo case vn question poet surder, &c.*

vi.33.H.6.4.6

Here Littleton maketh a question, and sheweth the reasons on both sides, and concludes with a Quære. When Littleton maketh a question, and sheweth the reason on both sides, the latter is euer his owne, (a) and the better. But Time hath made this question without question, for now all agree, That the ioynture is seuered for the time, according to the latter opinion here set down in Littleton, whose reasons are vnanswerable: for many times the change of the freehold makes an alteration or change of the reuersion. As if Tenant in Tayle, or the husband seised in the right of his wife, or tenant for life make a lease for life of the Lessee, in euerie of these cases the Lessour doth gaine a new reuersion by wrong, as shall be sayd more at large in the Chapter of Discontinuance, and if the elder brother grant the reuersion (expectant vpon a Freehold) for life, it shall cause possessio fratris, as hath beene sayd.

a) V.Be.349.375.439.440. 462.463.464 482.483.648. 720.729. vi.Sect.170.

vi.Sect.8. 7.H.5.

¶ *Per mesme le reason le reuersion que est dependant sur mesme le franktenement est seuer de le loynture, &c.*

7.H.7.9.

If two Ioyntenaunts in fee be, and they both ioyne in a Lease to an Abbot and a secular man for terme of their liues, here the reuersion that is dependant vpon seuerall freeholds is seuered. And so it is if they ioyne in a Lease to two secular men, to haue and to hold the one moitie to the

¶ Item si deux ioyntñts ẽ fee sont, et lun lessa ceo que a luy affiert a vn auẽ pur tme de sa vie, le Tenant a terme de vie durant sa vie, et lauẽ Ioyntenaunt que ne lessa passe, sont Tenants ẽ common. Et sur ceo case vn question puit surder sicome en tiel case, mittomus que l' lessor ad issue et dune, viuant lauter Ioyntenant son companion, et viuant l' tenant a terme de vie le question poet estre tiel: Si le reuersion de la moitie que le lessor auoit discẽdra al issue le lessor, ou que lauẽ ioyntenant auera cel reuersion per le suruiuor. Ascuns ont dit en cest case, que lauẽ ioyntenant auera cel reuersion per le suruiuor, et lour reason est tiel, ꝑ, que quant les ioyntenants fueront ioyntment seisies en fee simple, &c. coment que lun de eux fist estate de ceo que a luy affiert pur terme de sa vie, et cõt que il ad seuer le franktenement de ceo que a luy affiert

Also if there bee two Ioyntenaunts in Fee, and the one letteth that to him belongeth to another for terme of his life, the Tenant for term of life during his life, and the other Iointenãt which did not let, are tenants in Common. And vpon this case a question may arise, as in such case admit that the lessor hath issue and die, liuing the other Ioyntenant his companion, and liuing the Tenant for life, the question may be this, Whether the reuersion of the moity which the lessor hath shall discend to the issue of the Lessor, or that the other joyntenant shall haue this reuersion by the suruiuor. Some haue said in this case, that the other iointenãt shal haue this reuersion by the suruiuor: and their reason is this, ꝑ. That when the Iointenãts were iointly seised in fee simple, &c. although that the one of thẽ make an estate of that to him belongeth for term of his life, and although that hee hath seuered the

affiert per l'leale, vncore il nad seuer l'fee simple, mes le fee simple demurt a eux ioyntment cõe il fuyt adeuant. Et issint semble a eux, que lauter Joyntenant que surueſquist, auera le reuersion per l'Suruiuour, &c. Et auters ont dit le contrarie, & ceo est lour reason, ſ, que quaunt lun des Joyntenaunts lessa ceo que a luy affiert a vn auter pur terme de sa vie, per tiel Leale le Franktenemẽt est seuer ô le joynture. Et per mesme le reason le Reuersion que est dependant sur mesme le Franktenement, est seuer de le Joynture. Auxy si le Lessour vst reserue a luy vn annuall Rent sur le Leas, le Lessor solement aueroit le Rent, &c. le ql est vn proofe q̃ le reuersiõ est solement en luy, et que lauter nad riens en cel reuersion, &c. Auxy si le Tenant a term de vie fuit impleade, &c. & fist default apres default, donques le Lessor serroit de ceo solement receiue a defender son droit, & freehold of this which to him belongs by the leaſe, yet hee hath not seuer'd the fee simple, but the fee simple remains to them ioyntly as it was before. And so it seemeth to them, that the other Ioyntenaunt which suruiueth shal haue the reuersion by the suruiuor, &c. And others haue said the contrarie, & this is their reason, s. that when one of the Ioyntenants leaseth that to him belongeth, to another for terme of his life, by such Leaſe the freehold is seuered frõ the joynture. And by the same reason the reuersion which is depẽding vpon the same freehold is seuer'd frõ the joynture. Also if the lessor had reserued to him an annuall Rent vpon the leaſe, the lessor onely should haue had the Rent, &c. the which is a proofe, that the reuersion is onely in him, and that the other hath nothing in the reuersion, &c. Also if the Tenaunt for terme of life were impleaded, & maketh default after default, the lessor shall be only receiu'd for this, to defẽd one for life, & the other motty to the other for life, for both these cases are warranted by the authoritie of Littleton.

If two Joyntenants be of a Leaſe for twentie one yeres, and the one of them letteth his part for certaine yeares, part of the terme, the Joynture is seuered, and suruiuor holdeth not place, for a terme for a small number of yeares is as high an interest, as for manie more yeares, and so was it resolued Hil. 18. El. Reginæ, in Communi Banco, * which I my selfe heard. * Hil. 18. Eliz.

If two Coparceners be in fee, and the one make a Leaſe for life, this is no seuerance of the Coparcenarie, for notwithstanding the Lord shall make one auowrie vpon them both.

But if two Joyntenaunts be, and one maketh a Leaſe, this is a seuerance of the joynture, as Littleton here taketh it, and seuerall auowries shal be made vpon them.

¶ *Auxy si le Lessor vst reserue vn annual rent, le Lessor solement auera le rent, &c.* But if two Joyntenants make a Leaſe for life, reseruing a rent to one of them, the rent shall enure to them both, because the reuersion remains in toinˢture, vnlesse the reseruation be by Deed indented, and then he onely to whom it is reserued shall haue it. But if they make a Leaſe by Deed indented, reseruing or sauing the reuersion to one of them, that is voyd, because they had the reuersion before, but the rent is newly created. 5 E. 4. 4. a. 27. H. 8. 16. a. 7. E. 4. 25. 14. Ed. 3. Br. 282.

And so it is if such a Lessee for life should surrender to one of them, it shall enure to them both, for that they haue a ioynt reuersion. But if the Lessee grant his estate to one of them, no part of it shal enure to his Companion, because for the mottie belonging to his Companion, it is in esse- 5. E. 4. 4.

in

in him to whom the grant is made, the reuersion to the other in fee.

38.H.6.24.b. 2.R.3.tit. Extinguishment 3. If two Ioyntenants make a Lease for life, the remainder to his Companion in fee, this is a good remainder of his moitie to his Companion.

¶ *Donques le feoffor ſerra de ceo ſolement receiue, &c.*

¶ *Receiue*, Receit, Receptio, is in many caſes where a perſon partie to a writ, or an eſtranger thereunto, to whom a reuerſion or remainder appertaineth, ſhall in default of another perſon be receiued to defend his or her Freehold or Inheritance, the Law ſaith, Admittatur, &c. And this admiſſion or receipt is giuen by ſundrie ſtatutes, (f) (and this is that which the Ciuilians call, Admiſſio tertiæ perſonæ pro intereſſe.) Et in caſibus prædictis duæ concurrunt Actiones: Vna inter petentem & tenentem, & alia inter tenentem ius ſuum oſtendentem & petentem.

(f) W.2.cap.3. 20.E.1. Statute de Defenſione Iuris. 13.R.2.cap.16.

¶ *Pur ceo que vn Franktenement ne poet per nature de Ioynture, eſte annexe a vn reuerſion.* And this is the principall reaſon, and of this ſufficient hath beene ſayd in the chapter of Ioyntenants, Sect.291.

¶ *&c.* This &c. in the end of this Section, implieth any other heire lineall or collaterall.

ſon Compaignion en ceſt caſe en nul maner ſerroit receiue, le quel proue le reuerſion del moitie deſtre tantſolement en le Leſſor: Et ſic per conſequens, ſi le Leſſour morust viuant le Leſſee pur terme de vie, le reuerſion diſcendra al heire de Leſſour, & nemy deuiendra a lauter Ioyntenaunt per le ſuruiuor, Ideo quære. Mes en ceſt caſe ſi celuy Ioyntenant que ad le franktenement ad iſſue et deuie, viuant le leſſor & leſſee, donques il ſemble, que meſme iſſue aūa ceſt moitie en demeſne, et en fee per diſcent, pur ceo que vn Franketenement ne poet per nature de Ioynture eſtre annexe a vn reuerſion, &c. et il eſt certaine, que celuy que leſſa fuit ſeiſie de le moitie en ſon demeſne come de fee, et nul auera aſcun iointure en ſon Franktenement, Ergo ceo diſcendra a ſon iſſue, &c. Sed quære.

his right, and his Companion in this caſe in no manner ſhall be receiued, the which proueth the reuerſion of the moitie to be onely in the Leſſor: & ſo by conſequent if the Leſſour dieth, liuing the Leſſee for terme of life, the reuerſion ſhall diſcend to the heire of the Leſſour, and ſhall not come to the other Ioyntenant by the ſuruiuor, *Ideo quære.* But in this caſe if that Ioyntenant which hath the Freehold hath iſſue, & dies liuing the Leſſor and the Leſſee, then it ſeemeth that the ſame Iſſue ſhall haue this moitie in Demeſne, & in fee by diſcent, for that a Freehold cannot by nature of Ioynture bee annexed to a Reuerſion, &c. And it is certaine, That he which leaſed was ſeiſed of the moitie in his Demeſne as of Fee, and none ſhall haue any Ioynture in his Freehold, therefore this ſhall diſcend to his Iſſue, &c. *Sed quære.*

Section

Sect. 303.

¶ Mes si issint soit q̄ la ley en cest cas est tiel, que si le lesor deuie viuant le lessee, & viuant lauter ioyntenant, que ad le franktenement de lauter moitie, que le reuersion discendra al issue del lesor, donque est le ioynture, & title que ascun de eux poit auer per le suruiuor, & le droit de le ioynture anient, & tout ousterment defeat a touts iours. En mesme le maner est, si celuy ioyntenant que ad le franktenement deuie, viuant le lesor & le lessee si la ley soit tiel que son franktenemēt & fee q̄l ad en le moity, discendra a son issue, donques le ioynture serra defeat a touts iours.

BVt if it be so that the Law in this case bee such, that if the Lessor dye liuing the Lessee, and liuing the other ioyntenant which hath the freehold of the other moitie, that the Reuersion shall discend to the Issue of the Lessor, then is the Ioynture and title which any of them may haue by the Suruiuour, and the right of the Ioynture taken away, and altogether defeated for euer. In the same manner it is if that ioyntenant which hath the freehold dye liuing the Lessor and the Lessee, if the Law bee so as his freehold and fee which he hath in the moity shall discend to his Issue, then the Ioynture shall be defeated for euer.

¶ *Donque est le ioynture & title, &c. & le droit de le ioynture anient, &c.*

And the reason of this is, for if the ioynture be seuered at the time of the death of him that first deceased the benefit of Suruiuour is vtterly destroyed for euer, as hath beene said (*) afore in the Chapter of Ioyntenants. But in the case aforesaid, if tenant for life dyeth in the life of both the ioyntenants they are ioyntenants againe as they were before.

(*) *Vid. Sect 191.*

If two Ioyntenants bee in fee, and the one letteth his part to another for the life of the Lessor & the Lessor dieth, some say that his part shal suruiue to his companion, for by his death the Lease was determined. And others hold the contrary, and their reason is, first, for that at the time of his death the Ioynture was seuered, for so long as he liued the Lease continued. And secondly, that notwithstanding the act of any one of the Ioyntenants there must be equall benefit of Suruiuour as to the Freehold. But here if the other Ioyntenant had first dyed, there had beene no benefit of Suruiuor to the Lessor without question.

Sect. 304.

¶ Item si 3. ioyntenants sont, & lun release p̄ son fait a vn d̄ ses cōpanions tout le droit que il auoit en le terre, donques ad celuy a que le releas est fait le tierc̄ part de les ter-

ANd if three Ioyntenants be, and the one release by his deed to one of his companions all the right which hee hath in the land, then hath hee to whom the release is made the third part of

¶ Vpon this case these two things are to be obserued. First, that in this case this Release doth enure by way of mitter lestate, and not (*) by way of Extinguishment, for then the Release should enure to his Companion also, and he is in the Per by him that maketh the Release. (a) But if hee had released to the other two, then had it wrought no degree but

(*) 9. Eliz. Dier 263. 19. H. 6. 17.
(a) 40. E. 3 41. 13. E. 3. tit. Garr. 35. E. 3 release 43. 22. H. 6. 4 a 14. E. 3. Briefe 28. 19. H. 6. 17 33. H. 6. 5. 28. H. 6. 2. 37. H. 8. Alienation 31. 8. H. 4. 8. 10. E. 4. 3.

but in suppositon of Law, for many purposes they to whom the Release is made (as hath beene said) shall bee supposed in from the first feoffor as they shall deraigne the first warrantie for the whole. (b) The second thing to bee obserued is that hee to whom the Release is made hath a fee simple without these wordes (heires) as hath beene touched in the first Chapter of the first Booke, for that hee to whom the Release is, is seised per my, & per tout, of the fee and Inheritance as hath bin

res per force de le dit releas, & il & son companion, teignent les auters deux parts en ioynture. Et quant al tierce part, que il ad per force de releas, il tient cel tierce part oue luy mesme & son companion en common.

the Lands by force of the said release, and he and his companion shall hold the other two parts in Ioynture. And as to the third part which he hath by force of the release he holdeth that third part with himselfe and his companion in common.

(b) 9. Eliz. Dier 263. 19. H.6.17.

said in the Chapter of Joyntenants. And note the like Law is betweene Coparceners: and further if there be two Coparceners, and the one hath Issue twentie daughters and dyeth, the other may release to any one of the daughters her whole part, albeit she to whom the Release is, hath not an equall part, but for the priuitie and the indeuided estate the Release is good.

But if two Joyntenants be of twentie Acres, and the one maketh a feoffment of his part in eighteene Acres, the other cannot release his entire part, but only in two Acres, for that the Joynture is seuered for the residue.

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THis is euident vpon that which hath been said before. (c) And it is to bee vnderstood that a Release may enure foure manner of waies, first by way of mitter lestate as here it appeareth. Secondly, by way of mitter la droit. Thirdly, by way of Extinguishment. Fourthly, by way of creation or inlargement of an Estate, as hereafter in this chapter shall appeare. And it is to bee obserued that vpon a release that creates or inlargeth an estate, or enures by way of mitter lestate, a Rent may bee reserued, but not vpō a release that enureth by way of mitter le droit, or which enures by way of Extinguishment.

(c) 10. Eliz. Brudnell 9. Eliz. Dier 263.

See more of this in the Chapter of Releases.

10. E. 4. 3. b. 21. H. 6. 8. b.

The (&c.) in the end of this Section implyeth a diuersitie

CEt est alcauoir, q̄ alcun foits vn releas prendra effect, & vera pur mitter lestate de celuy que fist le releas, a celuy a que le releas en fait. sicome en le cas auantdit, & auxy sicome ioynt estate soit fait a le baron & sa feme, & a la tierce person & la tierce person relessa tout son droit que il ad a le baron, adonque ad le baron la moitie que le tierce auoit, & la feme de ceo nad riens. Et si en tiel case le tierce relessa a la feme nient nosmant le baron en le releas, donques ad la feme le moitie que le tierce auoit &c. & le barō nad riens de ceo forsq̄ en

AND is to bee obserued, that sometimes a deed of release shal take effect, and enure to put the estate of him which makes the release to him to whom the Release is made, as in the case aforesaid, and also, as if a ioynt estate bee made to the husband and wife, and to a third person, and the third person release all his right which hee hath to the husband, then hath the Husband the moitie which the third had, and the wife hath nothing of this. And if in such case the third Release to the Wife not naming the Husband in the Release, then hath the wife the moitie which the

en droit la feme, pur ceo que en tiel case le releasé vera de faire estate a celuy a que le releasé est fait, De tout ceo que affiert a celuy que fait le releasé, &c.

third had,&c. And the husband hath nothing of this but in right of his wife, because that in this case the releasé shall enure to make an estate to whom the releasé is made of all that which belongeth to him which maketh the releasé,&c.

betweene a releasé which enures by way of mitter lestate(whereof Littleton here speaketh) & a Releasé that enures by way of Extinguishment; for of a Releasé enuring by way of Extinguishment made to the husband the wife shall take benefit, or to the wife, the husband shall take benefit, as hereafter shall more at large be said.

Section 306.

CEt ẽ alcun cas vn releas vera de mitter tout le droit q̃ il q̃ fait le releas ad a celuy a q̃ le releasé est fait. Sicome home seisie de certain tenemẽts est disseisie per deux disseisors, si le disseisee p son fait relessa tout son droit, &c. a vn des disseisors, donque celuy a que le releas est fait anera & tiendra touts les tenements a luy solement, et oustera son companion de chescun occupation de ceo. Et le cause est, pur ceo q̃ les deux disseisors fuerõt eins encounter la ley, et quãt vn de eux happe le releas de celuy que ad droit dentre, &c. cest droit en tiel cas vestera en celuy a que le releas est fait, et est en tiel plyte, sicome il que auoit droit auoit enter, et luy enfeoffa,

ANd in some case a releasé shall enure to put all the right which he who maketh the releasé hath, to him to whom the releasé is made. As if a man seised of certaine tenements is disseised by two disseisors if the disseisee by his deed releasé all his right, &c. to one of the disseisors, then hee to whom the releasé is made shall haue and hold all the tenements to him alone, and shall oust his companion of euery occupation of this. And the reason is, for that the two disseisors were in against the law, and when one of them happeth the releasé of him which hath right of entrie, &c. this right in such case shall vest in him to whom the releasé is made, and he is in like plite, as hee which

THere Littleton pursueth the second part of his diuision, viz. where a releasé shall enure by way of Mitter le droit.

¶ *Disseisie per deux disseisors, &c.* The like law is, where there bee two toynt Abators or Intruders which come in meerely by wrong. But if two men doe vsurpe by a wrongfull presentation to a Church, and their Clarke is admitted, instituted and inducted, and the rightfull Patron releaseth to one of them, this shall enure to them both, for that the vsurpers come not in meerely by wrong, but their Clarke is in by admission and institution which are iudiciall acts. (f) And therefore an vsurpation shall worke a Remitter to one that hath a former right.

(f) Fitz N.B. 25. in 11.R.2. quare Imp. 144.

¶ *Donques celuy a que le releasé est fait anera & teignera touts les tenements, &c.* Here by operation of Law presently vpon the deliuery of the releasé the whole freehold and inheritance is vested in him to whom the releasé is made, and all the state, that the other Disseisor had wholly denested; for right and wrong cannot consist together, but the wrongfull estate giueth place to the rightfull. And the reason hereof is for that as hath beene said the disseisor to whom the releasé was

was made was seised Per my & per tout, whereunto when the right commeth it excindeth the wrong (e) for right which is lawfull, and wrong that is contrary to Lawe cannot stand together.

(e) Brit. fol.116.26. Ass.pl. 30. 39.E.3.29. 21.H.6.41 22.H.6.22. 7.E.4.25. 9. E.4.6. 11.H.7.12. 20.H. 7.5. 21.H.7.18. 12.E.4, tit. Diseisin.1. 9.H.6.37. 21.H.6.52.

¶ *En tiel plite ſi come il que auoit droit, auoit enter & luy enfeoffe &c.* This (&c.) doth imply that this is true ſecundum quid, but not ſimpliciter, for as to the holding out of the ioynt Diſſeiſor it amounts to as much as if he had entred and enfeoffed him to whom the releaſe is made, but it doth not amount to an entrie and feoffment Simpliciter to all purpoſes, as ſhall be ſaid hereafter in his proper place in the chapter of releaſes.

&c. Et la cauſe eſt, pur ceo que il q̄ auoit adeuant eſtate per tort, ſ. p diſſeiſin, &c. ad ore per le releas vn eſtate droiturel.

hath the right had entred & enfeoffed him, &c. And the reaſon is, for that he which before had an eſtate by wrong, s. by diſſeiſin, &c. hath now by the releaſe a right ful eſtate

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¶ HEre Littleton ſpeaketh of the third kinde of releaſes. And the reaſon of this diuerſitie (implyed in the (&c.) in the end of this Section) betweene the Diſſeiſors and their feoffees comming in by title and purchaſe are intended in Law to haue a Warrantie (which is much eſteemed in Law) and therefore leſt the warranty ſhould be auoyded, the Releaſe ſhall enure to both the Feoffees in fauour of Purchaſors, and ſo the right and benefit of euery one ſaued. (f) And in ancient time if the Diſſeiſor had made a Feoffment in fee, or a gift in taile, or a leaſe for life, and the Feoffee, Donee, or Leſſee had continued in ſeiſin quietly a yeare and a day, the entrie of the Diſſeiſee had not beene lawfull vpon him, and the reaſon was for the benefit and ſafegard of the Warrantie (which was intended by Law) ſhould haue beene deſtroyed by the entrie. But hereof alſo more ſhall bee ſaid in his proper place in the chapter of Releaſes.

(f) 20.H.3.Aſſ.432. 1.Aſſ.13. 9.Aſſ.15. 21.Aſſ.28. 27.Aſſ.68.32. 29.Aſſ.54. 43.Aſſ.17. 40.E.3.24. 50.E.3.21. 3.R.2. entrie cong: 38. 13.E 3.tit.Aſſ.9.12.Aſſ.20

¶ E̅t ẽ aſcun cas vn releas vera per voy dextinguiſhment, et en tiel caſe tiel releas aydera la iointenãt a que le releas ne fuit fait, auxybien come luy a q̄ le releaſe fuit fait. Sicome vn home ſoit diſſeiſie, et le diſſeiſor fait feoffment a deux homes en fee, ſi le diſſeiſee releſſa per ſon fait a vn de les feoffees, donq̄s cel releaſe vera ẽ a ambideux les feoffees, pur ceo q̄ les feoffees ont eſtate per la ley, ſ. per feoffment, et nemy per tort fait a nulluy, &c.

AND in ſome caſe a releaſe ſhall inure by way of extinguiſhment, and in ſuch caſe ſuch releaſe ſhall aide the ioyntenant to whom the releaſe was not made aſwell as him to whom the releaſe was made. As if a man be diſſeiſed and the diſſeiſor makes a feoffment to two men in fee, if the diſſeiſee releaſe by his deed to one of the feoffees, this releaſe ſhall enure to both the feoffees, for that the feoffees haue an eſtate by the law, s. by feoffment, and not by wrong done to any, &c.

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¶ E̅n meſme le maner eſt, ſi le diſſeiſor fait vn leaſe a vn hõe pur terñ de ſa vie, le remainder

IN the ſame manner it is if the diſſeiſor maketh a leaſe to a man for terme of his life the re-

der ouster a vn auter en fee, ſi le diſſeiſee releſſa a le tenant a terme de vie tout ſon droit, &c. cel releaſe vera auxybien a celuy en le remainder, come a le tenant a terme de vie. Et la cauſe eſt, pur ceo que le tenant a terme de vie vient a ſon eſtate per courſe de ley, & pur ceo cel releaſe vera, et prent effect per voy dextinguiſhment de droit de celuy que releſſa, &c. Et per cel releaſe le tenant a terme de vie nad pluis ample ne greinder eſtate, que il auoit deuant le releaſe fait a luy, et le droit celuy que releſſa eſt tout ouſterment extinct. Et entant que ceſt releaſe ne poit enlarge leſtate de le tenant a terme de vie, il eſt reaſon que cel releaſe vera a celuy en le remainder, &c.

mainder ouer to another in fee if the diſſeiſee releaſe to the tenant for terme of life all his right, &c. this releaſe ſhall inure aſwell to him in the remainder, as to the tenant for terme of life. And the reaſon is for that the tenant for life commeth to his eſtate by courſe of law, and therefore this releaſe ſhall enure and take effect by way of extinguiſhment of the right of him which releaſeth, &c. And by this releaſe the tenant for life hath no ampler nor greater eſtate then hee had before the releaſe made him, and the right of him which releaſeth is altogether extinct. And in aſmuch as this releaſe cannot enlarge the eſtate of the tenant for life, it is reaſon that this releaſe ſhall enure to him in the remainder, &c.

¶ Pluis ſerra dit de Releaſes en le Chapiter de Releaſes.

More ſhall be ſaid of Releaſes in the chapter of Releaſes.

¶ *Ceſt releaſe vera auxibien a celuy en le remainder, come a le tenãt a term de vie, &c.* Of this and the reſt of this Section, for auoyding of repetition, more ſhall be ſaid in his proper place in the chapter of Releaſes.

¶ *Tout ſon droit, &c.* Here by this (&c.) is implyed, title, demand and other words which may tranſferre the right, &c. Alſo here is implyed of in or to the land.

Sect. 309.

¶ Item ſi ſoyent deux Parceners, et lun alien ceo que a luy affiert a vn auter, donqs lauter perſon et lalienee ſont Tenants en Common.

Alſo if two Parceners be, and the one alieneth that to her belongeth, to another, then the other Parcener and the Alienee are Tenants in Common.

This is evident, and needeth no explication.

Section 310.

¶ Item nota que Tenaunts en Common poyent eſtre per title de Preſcription, ſicome lun et ſes auncеſtors, ou ceux que eſtate il

Alſo note that Tenaunts in Common may bee by title of Preſcription, as if the one and his Anceſtors, or they whoſe e-

ad ẽ vn moity ont tenus en Common meſme le moitie, oue lauter tenant que ad lauter moitie et oue ſes auncеſtors ou oue ceux que eſtate il ad Pro indiuiſo, de temps dont memorie ne curt, &c. Et diuers auters manners poient faire et cauſer homes deſtre Tenaunts en Common, que ne ſont icy expreſſes, &c.

ſtate he hath in one moitie haue holdē in cōmon the ſame moitie with the other tenāt which hath the other moitie, & with his Anceſtors, or with thoſe whoſe ſtate he hath vndiuided, time out of mind of man. And diuers other manners may make and cauſe men to be Tenants in Common, which are not here expreſt, &c.

11.E.3.Trans.213. 13.E.3. Breife 674. 8.H.6.16.b. Lib.Intrat.23.

OF this, beſides Littleton, there is good authoritie in Law, as there is for all his other caſes throughout his 3 bookes, but Ioyntenants cannot be by preſcription, becauſe there is ſuruiuor betweene them, but not betweene Tenants in Common.

The two (&c.) in this Section are euident.

Section 311.

IN this Section we learne two things: First, That in reall Actions, and in Actions alſo that are mixt with the perſonaltie, Tenants in Common ſhal ſeuer in Action, becauſe they haue ſeueral freholds, & claim in by ſeueral titles, and therefore as they ſhall be ſeuerally by others impleaded, ſo ſhall they ſeuerally implead others in all real and mixt Actions, vnleſſe it be in caſe of neceſſitie for a thing entire, as hereafter in this Chapter ſhall appeare. And Littleton here putteth the caſe of the Aſſiſe which is mixt with the perſonaltie, and therefore he needed not to put any caſe of any Precipe quod reddat, for if it be ſo in caſe of Aſſiſe A fortiori, in writs of higher nature, which is neceſſarily implied in the (&c.) Now of ſuits that ſound in the realtie, and of perſonal actions Littleton ſpeaketh hereafter in this Chapter.

ITem en aſcun cas Tenants en common doyent auer de lour poſſeſſion ſeuerals Actions, et en aſcū cas ils ioyndront en vn Action. Car ſi ſont deux Tenants en common, et ils ſont diſſeiſies, ils doyent auer deux Aſſiſes, et nemy vn Aſſiſe, car chelcun de eux couient auer vn Aſſiſe de ſon moitie, &c. Et la cauſe eſt, pur ceo que tenants en common fueront ſeiſies &c. per ſeuerals titles. Mes autrement eſt de Ioyntenants, car ſi ſoyent vint Ioyntenants, et ils ſont diſſeiſies, ils aueront ẽ touts lour noſmes forſque vn Aſſiſe, pur ceo que ils nont forſque vn ioynt title.

ALſo in ſome caſe tenants in Common ought to haue of their poſſeſſion ſeueral Actiōs and in ſome caſes they ſhall ioyne in one Action. For if two Tenants in Common be, and they be diſſeiſed, they muſt haue two Aſſiſes, and not one Aſſiſe, for each of them ought to haue one Aſſiſe of his moitie, &c. & the reaſon is, for that the Tenants in common were ſeiſed, &c. by ſeuerall Titles. But otherwiſe it is of Iointenants, for if twentie Ioyntenants be, and they bee diſſeiſed, they ſhall haue in al their names but one Aſſiſe, becauſe they haue not but one ioynt title.

4.E.4.18.b

The ſecond thing here to be learned, is the diuerſitie betweene Tenants in Common, and Ioyntenants, which both of it ſelfe, and vpon that which hath bin ſayd, is apparant.

Sect.

Sect. 312.

¶ Item ſi ſoyent trois Joyntenants, & vn releaſe a vn de ſes companiõs tout le droit que il ad, &c. et puis les auters deux ſont diſſeiſies de lentiertie, &c. en ceſt caſe les deux auters aueront ſeuerals Aſſiſes, &c. en ceſt forme, ſ. ils auerent en lour ambideux noſmes, vn Aſſiſe de les deux parts, &c. pur ceo que les deux pts ils teignont ioyntment al temps de le diſſeiſin. Et quant a le tierce part, celuy a que le releaſe fuit fait, conient auer de ceo vn Aſſiſe en ſon noſme demeſne, pur ceo que il (quaunt a meſme le tierce part) eſt de ceo Tenant en Common, &c. pur ceo que il vient a cel tierce part per force del Releaſe, et nemy tantſolement per force del ioynture.

ALſo if three Ioyntenants bee, and one releaſe to one of his fellowes all the right which hee hath, &c. and after the other two be diſſeiſed of the whole, &c. In this caſe the two others ſhall haue ſeuerall Aſſiſes, &c. in this manner, s. They ſhall haue in both their names an Aſſiſe of the two parts, &c. becauſe the two parts they held ioyntly at the time of the diſſeiſin. And as to the third part, he to whom the releaſe was made ought to haue of that an Aſſiſe in his owne name, for that hee (as to the ſame third part) is thereof Tenant in Common, &c. becauſe hee commeth to this third part by force of the Releaſe, and not onely by force of the Ioynture.

¶ This is put for an example (which euer doth illuſtrate the Rule) and is euident of it ſelfe: and the (&c.) in this Section needeth no further explication.

Sect. 313.

¶ Item quant a ſuer des Actions que touchant l'realtie, y ſont diuerſities perẽter parceners que ſont eins per diuers diſcents, & Tenaunts en common. Car ſi home ſeiſie de certaine terre en fee ad iſſue deux files et moruſt, et les files entront, &c. et cheſcun de eux ad iſſue vn fits, et deuieront ſauns partition fait enter eux, per que lun moity diſcendiſt a le fits dun Parcener, & lauter moitie diſcẽdiſt al fits dauter parcener, et ils entront

ALſo to the ſuing of Actions which touch the realty, there be diuerſities betweene parceners which are in by diuers diſcents, and Tenants in Common: For if a man ſeiſed of certain land in fee, hath iſſue two Daughters and dieth, and the Daughters enter, &c. and each of them hath iſſue a Sonne, and die without partition made between them, by which the one moitie diſcends to the Sonne of the one Parcener, and the other moitie diſcend to the

entront et occupiont en common et ſont diſſeiſies, en ceſt caſe ils auerõt en lour deux noſmes vn Aſſiſe et nemy deux Aſſiſes. Et la cauſe eſt, que coment que ils veignont eins per diuers diſcents, &c. vncore ils ſont Parceners et briefe de Partitione facienda, giſt enter eux. Et ils ne ſont parceners eyant regard ou reſpect tantſolement a le ſeiſin et poſſeſſion de lour meres, mes ils ſont Parceners pluis eiant reſpect a leſtate que diſcendiſt de lour ayel a lour meres, car ils ne poyent eſtre Parceners ſi lour meres ne fueront Parceners a-deuant, &c. Et iſſint a tiel reſpect et conſideration, ſ, quaunt a le primer diſcent que fuit a lour meres ils ont vn title en parcenarie, le quel fait eux parceners. Et auxy ils ne ſont forſque come vn heire a lour common Aunceſtor, ſ, a lour ayel de que la terre diſcendiſt a lour meres. Et pur ceux cauſes deuant partition enter eux, &c. il aueront vn Aſſiſe coment que ils veignont eins p ſeueralx diſcents.

Sonne of the other Parcener, and they enter and occupie in common and be diſſeiſed, in this caſe they ſhall haue in their two names one Aſſiſe, and not two Aſſiſes. And the cauſe is, for that albeit they come in by diuers diſcents, &c. yet they are Parceners, and a Writ of Partition lieth between them. And they are not Parceners, hauing regard or reſpect onely to the Seiſin and poſſeſſion of their mothers, but they are parceners rather, hauing reſpect to the eſtate which diſcend from their Graundfather to their mothers, for they cannot be Parceners if their mothers were not Parceners before, &c. And ſo in this reſpect and conſideration, s. as to the firſt diſcent which was to their mothers, they haue a Title in Parcenarie, the which makes them Parceners. And alſo they are but as one heire to their common Anceſtor, s. to their Grandfather, from whom the land diſcended to their mothers. And for theſe cauſes, before partition betweene them, &c. they ſhall haue an Aſſiſe, although they come in by ſeueral diſcents.

Vi. Sect. 241.

¶ THis, vpon that which hath beene ſayd in * the Chapter of Parceners, is euident: where you may read excellent points of learning, and diuerſities concerning this matter, all which are here either expreſſed or implied, as the ſtudious and diligent Reader will obſerue.

Sect. 314.

¶ *En ceſt caſe quant a le Rent & liuer de Pepper, ils auerount deux Aſſiſes & quaunt a leſperuer ou le Chiual forſque vn Aſſiſe.*

But for the better vnderſtanding hereof it is to bee knowne, That if two Te-

¶ Item ſi ſont deux tenants en Common de certaine Terre en fee, et ils doneront cel terre a vn home en le taile, ou leſſerõt a vn home pur terme de

ALſo if there bee two Tenants in Common, of certain Lands in Fee, and they giue this Land to a man in Taile, or let it to one for terme of life, ren-

de vie, rendant a eux annuelment vn certaine rent, & vn liuer de Pepper, & vn esperuer, ou vn chiuall, & ils sont seisies de cest seruice, & puis tout le rent est aderere, & ils distreigneront pur ceo, & le tenant a eux fait rescous. En cest cas quant a le rent & liuer de Pepper ils aueront deux Assises, & quant a lesperuer, ou le chiual forsq; vn Assise. Et la cause pur que ils aueront deux Assises, quant a le rent & liuer de Pepper, est ceo, entant que ils fueront tenants en common en seuerall titles, & quant ils fieront vn done en le tayle ou leas pur terme de vie, sauant a eux le reuersion, & rendant a eux certaine rent, &c. tiel reseruation est incident a lour reuersion, & pur ceo que lour reuersion est en common, & per seuerall titles, sicome lour possession fuit deuant, le rent, & auters choses que poient estre seueres, et fueront a eux reserues sur l' done, ou sur le leas, queux sont incidents per la ley a lour reuersion, tiels choses issint reserues fueront de la nature del reuersion. Et entant que l' reuersion est a eux

dring to them yearely a certaine rent, and a pound of Pepper, and a Hawke or a Horse, and they bee seised of this seruice, and afterwards the whole Rent is behind, and they distraine for this, and the tenant maketh Rescous. In this case as to the rent and pound of Pepper they shall haue two Assises, and as to the Hawke or the Horse but one Assise. And the reason why then they shall haue two Assises as to the rent and pound of Pepper is this, insomuch as they were Tenants in Common in seuerall titles, and when they made a gift in tayle or lease for life, sauing to them the Reuersion, and rendring to them a certaine rent, &c. such reseruation is incident to their reuersion, and for that their reuersion is in common and by seuerall titles as their possession was before the rent and other things which may be seuered, and were reserued vnto them vpon the gift or vpon the lease which are incidents by the Law to their reuersion, such things so reserued were of the nature of the reuersion. And in as much as the reuersion is to them in common by seuerall titles, it beho-

nants in Common bee, and they grant a rent of 20. shillings per annum, out of their land, the Grantee shall haue two rents of 20. shillings for that euery mans grant shall bee taken most strongly against himselfe, and therefore they be seuerall grants in Law.

Pl. Com. Hill & Graygs case 171. Vide Sect. 319.

But if they two make a gift in tayle, a lease for life, &c. reseruing twenty shillings rent to them and their heires they shall haue but one 20. shillings, for they shall haue no more then themselues reserued: and the Donee or Lessee shall pay but 20. shillings according to their owne expresse reseruation: And albeit the reseruation of rents seuerable bee in ioynt words, yet in respect of the seuerall Reuersions the Law makes thereof a seuerance. Now for the rent, as namely 20. shillings or a pound of Pepper may bee seuered, the one Tenant in Common may haue an Assise for the moytie of 20. shillings, and the moytie of a pound of Pepper, de medietate vnius libr' piperis, but he cannot haue an Assise of ten shillings, or de dimidio libræ piperis. But for the Hawke or Horse, albeit they be Tenants in Common, they shall ioyne in an Assise for otherwise they should bee without remedie, for one of them cannot make his plaint in Assise of the moytie of a hawke, or of a horse, for the Law will neuer suffer any man to demand any thing against the order of nature

Vide 16. Ass. Pl. 1. 16. E. 3. Iayndre en allien. 27.

ture or reason, as before, it appeareth by Littleton Section. 129 Lex enim spectat naturæ ordinem. Also the Law will neuer enforce a man to demand that which hee cannot recouer, and a man cannot recouer (l) the moytie of a Hawke, Horse or of any other entire thing. Lex neminem cogit ad vana, seu inutilia. But in that case they shall ioyne in Assise, and the reason is, Ne Curia Domini Regis deficeret in iustitia exhibenda, or lex non debet deficere cõquerentibus in iustitia exhibenda. And if they should not ioyne, they should haue damnum & iniuriam, and yet should haue no remedie (*) by Law, which should be inconuenient. But the Law will, that in euery case where a man is wronged and endammaged, that hee shall haue remedie. Aliquid conceditur ne iniuria remaneret impunita quod aliàs non concederetur.

Regula. Vide Sect 129.

(l) Lib. 5. fol. 21. Regula.

Regula.

(*) 3. E. 3. 19. a.

38. E. 3. 35. Regula.

en common per seuerall titles, il couient que le rent, et le liuer de Pepper, queux poient estre seuers, soyent a eux en common, et per seuerall titles, et de ceo ils aueront deux Assises, et chescun de eux en son Assise ferra son pleint de le moitie de le rent, et de le moitie del liuer de Pepper, mes de lesperuer, ou de chiual que ne poyent estre seuers, ils aueront forsque vn Assise, car home ne poit faire vn pleint en Assise de le moitie dun esperuer, ne de le moitie dun chiual, &c. En meisme le maner est dauter rents & dauter seruices que Tenants en Common ount en grosse per diuers titles, &c.

sueth that the rent and the pound of Pepper which may bee seuered, bee to them in common and by seuerall titles. And of this they shall haue two Assises, and each of them in his Assise shal make his plaint of the moytie of the rent, and of the moytie of the pound of Pepper. But of the Hawke or of the Horse which cannot be seuered, they shall haue but one Assise, for a man cannot make a plaint in an Assise of the moytie of a Hawke, nor of the moytie of a Horse, &c. In the same manner it is of other Rents and of other Seruices which Tenants in Common haue in grosse by diuers titles, &c.

(m) And Tenants in Common shall ioyne in a quare impedit, because the presentation to the Aduowson is entire.

(n) Also Tenants in Common of a Seignyory shall ioyne in a Writ of Right of ward, and Rauishment of ward for the bodie, because it is entire.

If two Tenants in Common be of the Wardship of the bodie, and one doth rauish the ward, and the one Tenant in Common releases to the Rauisher, this shall goe in benefit of the other Tenant in Common, and he shall recouer the whole, and this Release shall not be any barre to him. And so it is if two Tenants in Common be of an Aduowson, and they bring a Quare impedit, and the one doth release, yet the other shall sue forth, and recouer the whole presentment.

Two Tenants in Common shall ioyne in a detinue of Charters, and if the one be Nonsuit, the other shall recouer.

It is said that Tenants in Cõmon shall ioyne in a Warrantia Chartæ, but seuer in Warrier.

(m) 5. H. 7 8. 13. E. 2. quare imp. 170. 33. H. 6. 11. 6. E. 4. 10. 15. E. 3. dier. presentment 10.

(n) 6. H. 4. 6. 7. 45. E. 3. 10. 30. H. 6. Assise 39 18. E. 3. 56.

18. E. 3. 56.

¶ *Moitie de chiual, &c.* Here is implyed or any other entire rent or seruice.

¶ *Per diuers titles, &c.* That is by seuerall titles, and not by one ioynt title as hath beene said,

Section 315.

¶ *Aueront tiels actions personells iointment en touts lour noſmes, &c.* By this

¶ Item, quant al actiõs personals tenants en common aueront tiels actiõs per-

Also as to Actions personals Tenants in common may haue such actions per-

29. E. 3. 51. 43. E. 3. 24. 46. E. 3. 27. 5. H. 4. 3. 14. H. 4. 31. 3. H. 6. 17. 12. H. 6. 22. 22. H. 6. 14. 18. E. 4. 30. 2. R. 3. 16. 10. H. 7 27. 21. H. 7. 22. 37. H. 6. 35. 21. E. 4. 13.

psonals ioyntment en touts lour nosmes, sicome de tresspas, ou de offence que touche lour tenements en common, sicome de bruser lour measons, de enfreinder de lour closes, de pasture, degaster, & de fouler des herbes, de couper lour bois, de pischer en lour pischarie, & huiusmodi. **Et en cest cas tenãts en common aucront vn action ioyntment & recoueront ioyntment lour damages, pur ceo que laction est en le personaltie, & nemy ẽ l' realty, &c.**

sonals ioyntly in all their names as of tresspasse, or of offences which concerne their Tenements in Common, as for breaking their Houses, breaking their Closes, feeding, wasting, and defowling their grasse, cutting their Woods, for fishing in their Pischarie, and such like. In this case Tenants in Common shall haue one Action ioyntly, and shal recouer iointly their damages, because the Action is in the personaltie, and not in the realtie, &c.

it appeareth that Tenants in Common shall haue personal Actions ioyntly. And it is to bee obserued, that where dammages are to bee recouered for a wrong done to Tenants in Common, or Parceners in a personall Action, and one of them die, the Suruiuor of them shall haue the Action, for albeit the propertie or estate bee seuerall betweene them, yet (as it appeareth here by Littleton) the personall action is ioynt.

¶ Et huiusmodi. *Vide Sect.* 319. 320. 321.

Hereby is implyed a diuersity betweene a chattle in possession, and a personall Chose in Action belonging vnto them. As if two Tenants in Common be of land, and one doth a trespasse therein, of this action they are Jointenants, and the Suruiuor shal hold place. So it is if two Tenants in Common be of a Mann or, and they make a Baylife therof, and one of them dieth, the Suruiuor shall haue the Action of Account, for the 22.H.6.12. 38.E.3.7. 13.E.3. *accenus* 126. 45.E.3.13.14. 37.H.6.32.38.

Action giuen vnto them for the arrerages vpon the Account was ioynt. So it is if two Tenants in Common sow their land & one doth eat the same with his cattle, though they haue the Corne in Common, yet the Action giuen to them for trespasse in the same is ioynt, and shall suruiue. For the trespasse and dammage done to them was ioynt. all which here is implyed by Littleton, who sayth, that they shall haue an Action ioyntly, and the same Law is of Coparceners.

But if two Tenants in Common be of goods, as of an horse, or of any other goods personall, there if one dye, his Executors shall be Tenant in Common with the Suruiuor. 38.E.35.17.E.3.11.3.H.5. *Quare Imp.* 71.14.H.4.12. 9.H.6.30.22.H.4.14 37.H. 6.9.b.10.Eliz. *Dyer* 279. F.N.B.35.9.E.3.36.37. *Pl.Com.Seignior. Barkleys case.*

¶ *Et nemy en le realtie, &c.* **If two Tenants in Common bee** of an Idouwson, and a stranger vsurpe, so as the right is turned to an action, and they bring a writ of Quare impedit which concernes the realtie, the sixe moneths passe, and the one dyeth, the writ shall not abate, but the Suruiuor shall recouer, otherwise there should be no remedie to redresse this wrong. And so it is of Coparceners, and this is one exception out of our Authors rule.

(*) But if three Coparceners recouer land & dammages in an Assise of Mordancester, albeit the iudgement be ioynt, that they shall recouer the land and dammages, yet the dammages being accessory, though they be personall, doe in iudgement of Law depend vpon the Freehold, being the principall which is seuerall. And though the words of the iudgement be ioynt, yet shall it be taken for distributiue. And therefore if two of them dye, the entire dammages doe not surmiue, but the third shall haue execution according to her portion, and this is another exception out of our Authors rule. But if all three had sued Execution by force of an Elegit, and two of them had dyed, the third should haue had the whole by Suruiuor, till the whole dammages be paid (*) 14.E.3. *Execution* 75. 45.E.3.3.b.

If the Aunt and Niece ioyne in an Action of waste, for waste done in the life of the other sister, the Aunt shall recouer the dammages only, because the same belongs not by Law to the Niece. And some hold the dammages in that case to be the principall. 45.E.3.3.b. 48.E.3.14. 11.H.4.16.b. 35.H.6.23.b. 11.E.2.*Waste*.115.

Section 316.

¶ **Item si deux tenants en common font vn lease de lour**

Also if two Tenants in Common make a lease of their Te-

lour tenemẽts a vn auter p̃ termꝰ des ans, rendant a eux certaine rent annualment durant l' termꝰ si le rent soit aderere, &c. les tenants en cõmon auerõt vn action de debt enuers le lessee, et nemy diuers actions, pur ceo que laction est en la personalty.

nements to another for terme of yeares, rendring to them a certaine Rent yearely during the terme if the rent bee behinde, &c. the tenants in common shall haue an action of debt against the lessee, & not diuers actions, for that the action is in the personalty.

This vpon that which hath beene said is euident.

Sect. 317.

¶ MEs en auowry pur le dit rent ils couient seuer, Car ceo est en le realtie, come le assise est supra.

BVt in an auowry for the said rent they ought to seuer for this is in the realty, as the assise is aboue.

Vid. 9. E. 3. 36. 37. Pl. Com. Seignior Barkly's Case.

This being an addition to Littleton albeit it be consonant to Law yet I omit it.

Sect. 318.

¶ ITem, tenants en common poyent bien faire partition enter eux sils voilent, coment q̃ ils ne serront compelles de faire partition per la ley, mes sils font enter eux partition per lour agreement et consent, tiel partition est assets bone, come est adiudge en le liuer dassises.

ALso tenants in common may well make partition between them if they will, but they shall not bee compelled to make partition by the law, but if they make partition betweene themselues by their agreement and consent, such partition is good enough, as is adiudged in the booke of Assises.

* Vid. Sect. 259. 290. 247. 264

Of this sufficient hath beene said * in the chapter of Parceners and Joyntenants.

(o) 19. Ass p. 1. 30. Ass. p. 8. 47. E. 3. 22.

¶ *In le liuer Dassises.* This booke is of great Authority in Law, and is so called because it principally conteyneth the proceeding vpon Writs of Assise of Nouel disseisin which in those dayes was Festinum & frequens remedium.

Sect. 319.

¶ ITem, sicome y sont tenants en common de terres et tenements, &c. come est auantdit: En mesme le maner y sont de chattels reals et personals: Sicome lease soit fait de certaine terres a deux homes pur terme de 20. ans, et quant ils sont de ceo

ALso as there bee tenants in common of lands and tenements, &c. as aforesaid. In the same manner there be of chattells reals and personals. As if a lease bee made of certaine lands to two men for terme of 20. yeares, and when they be of this possessed, the

ceo poſſeſſes lun de les leſſees grant ceo q̄ a luy affiert durant le terme a vn auter, donq̄ meſme celuy a que l' grant eſt fait, et lauter tiendront et occupieront en common.

one of the leſſees grant that which to him belongeth to another during the terme, then hee to whom the grant is made, and the other ſhall hold and occupie in common.

¶ *Grant ceo que a luy affiert.* The ſame law it is if the one Leſſee in this caſe make a Leaſe of part of the terme, the ſecond Leſſee and the other are Tenants in common as hath beene ſaid in the chapter of Joynt-tenants. The (&c.) in this Section implyeth other hereditaments whereof men may bee Tenants in common, whereof ſufficient hath beene ſaid before. *Vid. Sect. 315.*

Section 320.

¶ Item, ſi deux ont ioyntm̄t le gard̄ de corps & de tre dun enfant deins age, et lun de eux granta a vn auter ceo q̄ a luy affiert de m̄ le garde, donque le grantee et lauter que ne granta pas, aueront et tiendront ceo en common, &c.

ALſo if two haue ioyntly the wardſhip of the body & lād of an infant within age, & the one of them grant to another that which to himſelfe belongeth of the ſame ward, then the grantee, and the other which did not grant ſhall haue & hold this in common, &c.

¶ Hereby it appeareth, that there may bee Tenants in Common as well of chattells reall entire, as wardſhip of the body, &c. as of chattels Perſonal, as a Hawke or a Horſe. If two Tenants in common be of a Seigniory, and a Ward fall, they are Tenants in common of the wardſhip aſwell of the body as land. And ſo it is, if the land it ſelfe eſcheat to them, they ſhall be Tenants in common thereof, and ſo it is of Parceners. *15.E.3.tit.8.*

¶ *En common, &c.* Here (&c.) implyeth any other entire chattell. *Vid. denant. Sect. 315.*

Section 321.

¶ En meſme le maner eſt de chateux perſonals: Sicome deux ont ioyntment per done ou per achate vn chiual ou boefe, &c. et lun grant ceo que a luy affiert de meſme le chiual ou boefe a vn auter: Donq̄s le grātee, & lauter que ne granta pas, aueront et poſſideront tiels chateux perſonals en cōmon. Et en tiels caſes, ou diuers perſons ont chateux reals ou perſonels en common et p diuers titles, ſi lun de eux morust, les auters q̄ ſurueſquont, nauera ceo p le ſurviuor

IN the ſame manner it is of chattells perſonals. As if two haue ioyntly by gift or by buying a horſe or an oxe, &c. and the one grant that to him belongs of the ſame horſe or oxe to another, the grantee and the other which did not grant, ſhall haue and poſſeſſe ſuch chattells perſonalls in common. And in ſuch caſes where diuers perſons haue chattells real or perſonall in Common, and by diuers titles, if the one of them dieth the others which ſuruiue ſhall not haue this as Suruiuor, but the exe-

uiuor, mes les executors celuy que mozust tiendzõt et occupier ceo ouesqz eux que suruesquont, sicome lour testator fist ou deuoit en sa vie, &c. pur ceo q̃ lour titles & dzoits en ceo fueront seuerals, &c.

cutors of him which dieth shall hold and occupie this with them which suruiue, as their testator did or ought to haue done in his life time, &c. becauſe that their titles and rights in this were seuerall, &c.

This is euident enough, and hereof sufficient hath beene said * before.

Vid. dictum Sect. 315.

Section 322.

¶ *Pur terme de ans, &c.* For one yeare, halfe a yeare, &c.

¶ *Lun occupy tout & mist lauter hors de possession.* These are words materially added, for albeit one Tenant in Common take the whole profits, the other haue no remedie by Law against him, for the taking of the whole profits is no ejectment. But if he driue out of the land any of the cattell of the other Tenaunt in Common, or not suffer him to enter or occupie the land, this is an ejectment or expulsion, whereupon he may haue an Ejectione firmæ, for the one moitie, and recouer damages for the entrie, but not for the meane profits.

¶ Ejectione firmæ *de la moitie, &c.* Here by this and the other (&c.) in these two Sections, are to be vnderstood diuers diuersities betweene Actions which concerne right and interest, (as of Ejectione firmæ, Ejectment de gard, quare ejecit infra terminum of a Chattell real vpon an expulsion or ejectment) and Actions concerning the bare taking of the profits rising of the Land, or doing of Trespasse vpon the Land, as here by the examples doe appeare, for the right is seuerall, and the taking of the profits in Common. The second diuersitie is betweene

21.E.4.11.22.43.E.3.24. 45.E.3.13. 22.H.6.50.58. 8.H.6.17. 19.H.6.57. 32.H.6.16.2.E.4.23. 14.E.4.8. 18.E.4.30. 37.H.6.33. 21.E.3.29. 12.Ass.28. 47.E.3.22.b. 10.H.7.16. F.N.B.117.a. 17.E.2.*Account* 122.

¶ ITem en le case auãtd, sicõe deux ont estat en common pur terme dans, &c. lun occupier tout, et mist lauter hors de possession et occupation, &c. donques celuy que est mise hors de occupation auera enuers lauter briefe de Ejectione firmæ, de la moitie, &c.

ALso in the case aforesayd, as if two haue an estate in Common for terme of yeares, &c. the one occupy all, and put the other out of possession and occupation, hee which is put out of occupation, shall haue haue against the other a writ of *Ejectione firmæ* of the moitie, &c.

Sect. 323.

¶ EN mesme le manñ est, lou deux teignont le gard des terres ou tenements durant le nonage dũ enfant, si lun ousta lauter de son possession, il que est ouste auera briefe de Ejectment de gard de le moitie, &c. pur ceo que ceux choses sont chateux realx, & poyent estre appoztions et seuers, &c. Mes nul Action de Trespas, cestascauoir, Quare clausum suum fregit, & herbam suam, &c. con-

IN the same manner it is, where two hold the wardship of Lands or Tenements during the nonage of an Enfant, if the one ouſt the other of his possession, he which is ousted shal haue a Writ of *Ejectment de gard* of the moitie, &c. becauſe that these things are Chattels reals, and may bee apportioned and seuered, &c. but no Action of Treſpaſſe (*videlicet*) *Quare clauſum ſuum fregit, & herbam ſuam &c. conculcauit, & con-*

conculcauit & consumpsit, &c. & huiusmodi actiones, &c. **lun ne poet auer enuers lauter pur ceo q̃ chescun de eux poet enter et occupier en cõmon, &c. per my et p tout les Terres & tenements queux ils teignõt en common. Mes si deux sont possessed de chattels personalx en commõ per diuers titles, sicome dun Chiual ou Boef, ou Vache, &c. si lun prent ceo tout a luy hors p̃ possession dauter, lauter nad nul aũt remedie, mes de prender ceo de luy que ad fait luy & tort, pur occupier en common, &c. quant il poet veier son temps, &c. En meſm̃ le manner est de chattels realx, que ne poyent estre seuers, sicome en le case auantdit, que deux fõt possesse dun gardõ corps dun enfant deins age, si lun prent lenfant hors de possession dauter, lauter nad ascun remedie per ascun action per la ley, mes de prendõ lenfant hors de le possession dauk quaunt il veit son temps.**

sumpsit, &c. & huiusmodi actiones, &c. the one cannot haue against the other, for that each of them may enter & occupie in cõmon, &c. *per my & per tout*, the Lands and Tenements which they hold in Common. But if two be possessed of Chattells personalls in Common by diuers titles, as of a Horse, an Oxe, or a Cowe, &c. if the one take the whole to himselfe out of the possession of the other, the other hath no other remedie but to take this from him who hath done to him the wrong to occupie in common, &c. when he can see his time, &c. In the same manner it is of Chattels realls, which cannot be seuered, as in the case aforesayd, where two bee possessed of the wardship of the bodie of an Enfant within age, if the one taketh the Enfant out of the possessiõ of the other, the other hath no remedie by an action by the Law, but to take the enfant out of the possession of the other when he sees his time.

Chattells realls that are apportionable or seuerable, as Leases for yeares, wardship of lands, interest of tenements by Elegit, Statute merchant, Staple, &c. of lands and tenements and Chattells reals entire, as wardship of the bodie, a Villeine for yeares, &c. for if one Tenant in common take away the ward or the Villeine, &c. the other hath no remedie by Action, but he may take them againe. Another diuersitie is betweene Chattells reals and Chattels personalls, for if one Tenant in Common take all the Chattells personals, the other hath no remedie by Action, but hee may take them againe, and herein the like law is concerning Chattells reals entire, and Chattels personall for this purpose. But of Chattels entire, as of a ship, horse, or any other entire Chattell, reall or personall, no surrutnor shall bee betweens them that hold them in Common: And Tenants in Common shall not ioyne in an Ejectione firmæ, nor in a Writ of Ejectment de gard, or a Quare ejecit infra terminum, &c. for that these Actions concerne the right lands which are seuerall. 10.H.4.Trespas 198. 11.H.4.5. 21.E.4.11.12.

If two Tenants in Common be of a Mannor, to the which Waife and Stray doth belong, a stray doth happen, they are Tenaunts in Common of the same; & if the one doth take the stray, the other hath no remedie by action, but to take him againe. But if by prescription the one is to haue the first beast happening as a stray, and the other the second, there an action lieth if the one take that which pertaines to the other. 13.E.3.B iefe 674.

If two Tenants in Common be of a Doue house, and the one destroy the old Doues whereby the flight is wholly lost, the other Tenant in common shall haue an Action of Trespasse, Quare vi & armis columbare le pl' fregit & ducentas columbas pretij 40. s. interfecit per quod volatum columbaris sui totaliter amisit: For the whole flight is destroyed, and therefore her cannot in barre 47 E.3 22.5.

barre plead Tenancie in Common. And so it is if two Tenaunts in Common bee of a Parke, and one destroyeth all the Deere, an Action of Trespasse lieth.

4.E.2.Trespas 233.
(c) 1.H.5.1. 2.H.5.3.

(c) If two Tenants in Common be of land, and of Mere stones, pro metis & bundis, and the one take them vp and carrie them away, the other shal haue an Action of Trespasse Quare vi & armis against him, in like manner as he shall haue for destruction of Doues.

(d) 43 E.3.Trespas 212. 19.R.2.Br.927. 11.E.3. Trespas 212.Vi.18.H.6.5.

(d) If two Tenants in Common be of a Folding, and the one of them disturbe the other to erect Hurdles, he shall haue an Action of Trespasse quare vi & armis, for this disturbance.

(e) 13.H.7.26.

(e) If two seuerall owners of houses haue a riuer in common betweene them, if one of them corrupt the riuer, the other shall haue an Action vpon his case.

(f) F.N.B.127.Reg.163.

(f) If two Tenants in Common, or Iointenants be of an house or mill, and it fal in decay, and the one is willing to repaire the same, & the other will not, he that is willing shal haue a writ de reparatione facienda, and the writ saith, Ad reparationem & sustentationem eiusdem domus teneantur, whereby it appeareth, that owners are in that case bound pro bono publico to maintaine houses and mills which are for habitation and vse of men.

17.E.2.tit.Accounts 22. 8.E.2.Accounts 115. 30.E.1.Account 127. 45. E.3.10. 47.E.3.22.b. 38. E.3.9. 22.E.3.60. 3.E.3. 27. 39.E.27.82. F.Nat. B.118.i. 10.H.7.16. 2.E.4.25.

If one Ioyntenant or Tenant in Common of Land maketh his Companion his Baylife of his part, he shall haue an Action of Account against him, as hath beene sayd. But although one Tenant in Common or Ioyntenant without being made Baylife take the whole profits, no Action of Account lieth against him, for in an Action of Account he must charge him either as a Guardian, Baylife, or Receiuer, as hath been sayd before, which he cannot be in this case, vnlesse his companion constitute him his Bailife. And therefore all those Bookes which affirme that an Action of Account lieth by one Tenant in Common, or Ioyntenant, against another, must be intended when the one maketh the other his Bailife, for otherwise, neuer his Baylife to render an Account, is a good plea.

W.2.ca.23.

If there be two Tenants in Common of a wood, Turbarie, Piscarie, or the like, and one of them doth waste against the will of his companion, his companion shall haue an Action of waste, and he that did the waste before iudgement, hath election either to take his part in certaintie by the Sheriffe and the oath of men, &c. or that he grant, That from thenceforth he shal not doe waste but according to his portion, &c. and if he make choice of a certaine place, then the place wasted shall be assigned to him. (g) But this extends not to Coparceners, because they were compellable to make partition by the Common Law: and this, as it is sayd, doth extend as wel to Tenants in Common and Ioyntenants for life, as to an estate of Inheritance. But if one Tenant in common, or Ioyntenant of a Doue house, destroy the whole flight of Doues, no Action of waste doth lie in that case vpon the said Statute, * as some doe hold.

(g) 27.H.8.13.21.E.3.29. 29.E.3.39.3.E.2.Waste.35. F.N.B.59.d. F.N.B.49.i.

* 47.E.3.22. 50.E.3.3.

If lands be giuen to two, and to the heires of one of them, and the tenant for life doth wast, he that hath the Inheritance shall haue no action of waste by the statute of Gloucester, but vpon the statute of W.2. he shall haue an Action of waste. And it is to be knowne, that one Tenant in common may infeoffe his companion, but not release, because the freehold is seuerall. Ioyntenants may release, but not infeoffe, because the freehold is ioynt, but coparceners may both infeoffe and release, because their seisin to some intents is ioynt, and to some seuerall.

10.E.4.3.b. 22.H.6.42. 21.E.3.47. 17.E.3.47. 18.E.4.27.28. 3.E.4.

Sect. 324.

¶ Item quant vn home voile mẽer vn feoffemẽt fait a luy ou vn done en le taile, ou vn lease pur tme de vie dascun tres ou tenemẽts, la il dirra p force de quel feoffemẽt, done ou leas il fuit seisie, &c. mes lou vn voile pleade vn leas ou grãt fait a luy d chattel real ou personal, la il dirra per force de quel il fuit possesse, &c.

¶ Pluis serra dit de tenants en common en le chapter de Releases, et tenant per Elegit.

ALso when a man will shew a Feoffement made to him, or a gift in taile, or a lease for life of any lands or Tenements, there hee shall say, By force of which Feoffement, gift, or lease, he was seised, &c. but where one wil plead a lease or grant made to him of a Chattell reall or personall, then he shal say, By force of which he was possessed, &c.

More shall be said of Tenants in Common, in the Chapters of Releases and Tenant by *Elegit*.

¶ *Il fuit seisie, &c.* Seisie is a word of art, and in pleading is onely applied to a Freehold at least; as Possesse for distinction sake is to a Chattell real or personall.

If B. plead a feoffement in fee, he concludeth, Virtute cuius prædict' B. fuit seisitus, &c. But if he plead a leafe for yeares, he pleadeth, Virtute cuius prædictus B. intrauit, & fuit inde possessionatus, and so it is of Chattels personalls.

And this holdeth not onely in case of Lands or Tenements which lie in liuerie, but also of Rents, Aduowsons, Commons, &c. and other things that lie in grant, whereof a man hath an estate for life or inheritance.

Also when a man pleads a leafe for life, or any higher estate which passeth by liuerie, hee is not to plead any entrie, for he is in actuall seisin by the liuerie it selfe. Otherwise it is of a Leafe for yeares, because there he is not actually possessed vntill an entrie.

Chap.5. Of Estates vpon Condition. Sect.325.

Glanvill. lib. 10 cap. 8. Bracton lib. 2. cap. 5. f. 7. & c. lib. 4. fol 213. Britton cap. 36. & fol. 89. 99. 114. 130. 205. 206. 207. 249. Fleta lib. 3. ca. 9. & lib 5 ca. 5. Mirror cap. 2. §. 15. & 17.

¶ Estates, q̃ homes ount en terr̃s ou tenements sur condition sont de deux maners, scilicet ou ils ont estate sur condition en fait, ou sur condition en ley, &c. Sur condition en fait est, sicome vn home per fait endent enfeoffa vn auter en fee simple, reseruant a luy & a les heires annualment certaine rent payable a vn feast, ou a diuers feasts per an, sur condition que si le rent soit aderere, &c. que bien list al feoffor & a les heires en mesmes les terres ou tenements de entrer, &c. ou si terre soit alien a vn home en fee rendant a luy certaine rent, &c. & sil happa q̃ le rent soit aderere per vn semaigne apres ascun iour de payment de

Estates, which men haue in lands or tenements vpon condition are of two sorts, *viz.* either they haue estate vpon Condition in Deed, or vpon Condition in Law, &c. vpon Condition in Deed is, as if a man by Deed indented, enfeoffes another in fee simple, reseruing to him and his heires yearely a certaine rent payable at one feast or diuers Feasts *per annum*, on condition that if the rent bee behind, &c. that it shall bee lawful for the Feoffor and his heires into the same Lands or Tenements to enter, &c. And if it happen the rent to be behind by a weeke after any day of payment of it, or by a moneth after any day of payment of it, or by halfe a yeare, &c. that then it shall be lawful to the Feoffee

¶ *Vr condition.* Littleton hauing before spoken of Estates absolute, now beginneth to intreate of Estates vpon condition. And a Condition annexed to the realtie whereof Littleton here speaketh in the legall vnderstanding est modus an Exqualitie annexed by him that hath Estate interest, or right to the same, whereby an Estate, &c. may eyther be defeated, or inlarged, or created vpon an incertaine euent. Conditio dicitur cum quid in casum incertum qui potest tendere ad esse aut non esse confertur.

¶ *Sur condition en fait, quæ est facti,* that is, vpon a condition expressed by the partie in legall termes of Law.

¶ *Ou sur condition en ley, &c.* quæ est iuris, that is, tacitè created by Law without any words vsed by the partie. Againe Littleton subdeuideth Conditions in deed (though not in expresse words) into conditions precedent (of which it is said, Conditio adimpleri debet priusquam sequatur effectus) and conditions subsequent. Againe, of conditions in deed some be affirmatiue, and some in the negatiue; and some in the affirmatiue, which imply a negatiue: some make the Estate, whereunto they are annexed, voidable by entrie or clayme, and some make the estate

Estate void ipso facto, without entrie or clayme.

Also of conditions in deed, some bee annexed to the rent reserued out of the Land, and some to collaterall acts, &c. some bee single, some in the conjunctiue, some in the disiunctiue, as shall euidently appeare in this Chapter, where the examples of these diuisiõs shall bee explayned in their proper place.

Mirror cap.2.§.15.& 17.

¶ *En ley, &c.* Of conditions in Law more shall be said hereafter in this chapter.

¶ *Sur condition en fait, est sicome vn home per fait indent, &c.* Here Littleton putteth one example of sixe seuerall kinds of conditions. That is, First, of a single condition in Deed. Secondly, of a Condition subsequent to the Estate. Thirdly, a condition annexed to the rent, &c. Fourthly, a Condition that defeateth the Estate. Fiftly, A condition that defeateth not the Estate before an entrie. And lastly, a condition in the affirmatiue, which implyeth, a negatiue, (as behind or vnpaid implyeth a negatiue) viz. not paid. All which bee appeare by the expresse words of Littleton.

ceo, ou per vn moys apres ascun iour de payment de ceo, ou per vn demy, &c. que adonques bien lirroit a le feoffor & a les heirs dentrer, &c. En ceux cases si le rent ne soit paie a tiel temps ou deuant tiel temps limit & specifie deins les condition compryses en lendenture, dõques poit le feoffor ou ses heirs entrer en tielx terres ou tenements, & eux en son primer estate auer & tener, & de ceo ouste le feoffee tout net. Et est appelle estate sur condition pur ceo que le state le feoffee est defeasible si le condition ne soit perform, &c.

for and his heires to enter, &c. In these cases if the rent bee not paid at such time or before such time limited and specified with in the Condition cõprised in the Indenture, then may the Feoffor or his heires enter into such Lands or Tenements, and them in his former estate to haue and hold, and the Feoffee quite to ouste thereof. And it is called an estate vpon Condition, because that the state of the Feoffee is defeasible, if the Condition bee not performed, &c.

¶ *Rend a luy certaine rent, &c.* Here, by this (&c.) is implyed for life, in tayle, or in fee.

¶ *Et en ceste case si le rent ne soit pay a tiel temps, &c. donques poet le feffor ou ses heires enter, &c.* By this Section, and by the (&c.) therein contayned, sixe things are to be vnderstood.

(b) 40.Ass.11. 20.H.6.30. 31.6.H.7.7. 19.H.6.76. 20.H.6.32. 22.H.6.46. Pl.Com. Kidwelys case fol.70. & Hill & Granges case fol.73.

First, where our Author sayth, Si le rent soit arere, that though the rent bee behind and not paid, (b) yet if the Feoffor doth not demand the same, &c. he shall neuer reenter, because the land is the principall debtor, for the rent issueth out of the Land, and in an Assise for the rent the land shall be put in view, and if the land be euicted by a title paramont, the rent is auoyded and after such euiction the person of the Feoffee shall not be charged therewith, for the person of the Feoffee was only charged with the rent in respect of the grant out of the Land.

Secondly, The demand must be made vpon the Land, because the Land is the debtor, and that is the place of demand appointed by Law.

Lib.4.fol.72.73. Broughes case.

If the King maketh a Lease for yeares rendring a Rent payable at his receipt at Westminster, and after the King granteth the Reuersion to another and his heires, the Grantee shall demand the Rent vpon the Land, and not at the Kings Receipt at Westminster, for as the Law without expresse words doth appoint the Lessee in the Kings Case to pay it at the Kings Receipt, so in case of a subiect, the Law appoints the demand to be on the Land.

49.Ass.5.15.Eliz.Dyer 329

If there be a house vpon the same he must demand the Rent at the house. And hee cannot demand it at the backe doore of the house but at the fore doore, because the demand must euer be made at the most notorious place. And it is not materiall whether any person be there or no.

(c) Vendices Trespasse 4.& 5 Pl.& Mar.

Albeit the Feoffee be in the Hall or other part of the House, yet the Feoffor need not (c) but come to the fore doore, for that is the place appointed by Law, albeit the doore be open.

(d) If

(d) If the feoffment were made of a wood only, the demand must be made at the gate of the wood, or at some high way leading through the wood or other most notorious place. And if one place be as notorious as another, the Feoffor hath election to demand it, at which hee will, and albeit the Feoffee be in some other part of the wood readie to pay the Rent, yet that shal not excuse him. Et sic de similibus. (d) 15. Eliz. Dyer 329.

Thirdly, And if the Feoffor demand it on the ground at a place which is not most notorious, as at the backe doore of a house &c. and in pleading the Feoffor alleadge a demand of the Rent generally at the house, the Feoffee may trauerse the demand, and vpon the euidence it shall bee found for him, for that it was a void demand.

Fourthly, If the Rent bee reserued to bee paid at any place from the Land, yet it is in Law a Rent, and the Feoffor must demand it at the place appointed by the parties obseruing that which hath beene said before concerning the most notorious place. Lib.4. Barons his Case fol.73. Pl.Com.70.

Fiftly, And all this is to be vnderstood when the Feoffee is absent, for if the Feoffee commeth to the Feoffor at any place vpon any part of the ground at the day of payment, and offer his Rent, albeit they be not at the most notorious place, nor at the last instant the Feoffor is bound to receiue it, or else he shall not take any aduantage of any demand of the Rent for that day.

Sixtly, therfore the place of demand being now known, it is further to be known what time the Law hath appointed for the same. This partly appeareth by that which hath beene last said. For albeit the last time of demand of the rent is such a conuenient time before the sunne setting of the last day of payment as the money may be numbred and receiued; notwithstanding, if the tender be made to him that is to receiue it vpon any part of the land at any time of the last day of payment, and he refuseth, the condition is saued for that time, for by the expresse reseruation the money is to be paid on the day indefinitely, and conuenient time before the last instant, is the vttermost time appointed by Law to the intent that then both parties should meet together, the one to demand and receiue, and the other to pay it, so as the one should not preuent the other. But if the parties meet vpon any part of the land whatsoeuer one the same day, the tender shal saue the Condition for euer for that time. Lib.5.fol.114.Wades Case.

And if the reseruation of the rent be (as here Littleton putteth the case) at certaine feasts with condition that if it happen the rent to be behinde by the space of a weeke after any day of payment, &c. In this case the Feoffor needeth not demand it on the feast day, but the vttermost time for the demand is a conuenient time (as hath beene said) before the last day of the weeke, vnlesse before that the Feoffee meet the Feoffor vpon the land and tender the rent as is aforesaid. Pl.Com.Hill et Grauges case 167.172. 20.H.6.30.31. 6.H.7.3.

If a rent be granted payable at a certaine day and if it be behinde and demanded that the Grantee shall distreine for it; In this case the Grantee need not demand it at the day, but if he demand it at any time after he shall distreyne for it, for the Grantee hath election in this case to demand it when he will to inable him to distreine. Mich.40.& 41. Eliz. inter Stanly & Read. Lib.7.fo.28.Maunders case.

¶ *Et eux en son primer estate auer, &c.* Regularly it is true that he that entreth for a condition broken shall be seised in his first estate, or of that estate which he had at the time of the estate made vpon condition, but yet this fayleth in many cases. 8.H.7.7.b.

First in Respect of Possibility. As if a man seised of lands in the right of his wife, maketh a Feoffment in fee by Deed indented, vpon condition that the Feoffee should demise the land to the Feoffor for his life, &c. the husband dyeth the Condition is broken, in this case the heire of the husband shall enter for the Condition broken, but it is impossible for him to haue the estate that the Feoffor had at the time of the Condition made; For therein he had but an estate in the right of his wife, which by the couerture was dissolued. And therefore when the heire hath entred for the Condition broken and defeated the Feoffment, his estate doth vanish and presently the estate is vested in the wife. 4.H.6.2. Lib.8 fo.43,44 Whittinghams case.

2. In respect of Necessity. If Cesty que vse after the Statute of R.3. and before the Statute of 27.H.8. had made a Feoffment in fee vpon condition, and after had entred for the condition broken. In this case he had but an vse when the Feoffment was made, but now hee shall be seised of the whole state of the land. So that as in the former case, the Ancestor had somewhat at the making of the Condition, and the heire shall haue nothing when he hath entred for the Condition broken, so in this case the Feoffor had no estate or interest in the land at the time of the Condition made, but a bare vse, yet after his entrie for the Condition broken he shall be seised of the whole state in the land, and that also for necessitie, for by the Feoffment in fee of Cēv que vse, the whole estate and right was deuested out of the Feoffees. And therefore of necessitie the Feoffor must gaine the whole estate by his entrie for the Condition broken. 5.H.7.6.a.

Tenant in speciall taile hath issue, and his wife dieth; Tenant in taile maketh a Feoffment in fee vpon Condition, the issue dieth, the Condition is broken, the Feoffor re-enters, he shall haue

haue but an estate for life, as Tenant in taile after possibility of issue extinct by the re-entry, and yet he had an estate taile at the time of the Feoffment, and that also for necessity.

3. In some cases the Feoffor by his re-entry shall be in his former estate, but not in respect of some collaterall qualities. As if Tenant by Homage ancestrell maketh a Feoffment in fee vpon Condition, and entreth vpon the Condition broken, it shall neuer be holden by Homage ancestrell againe. And so it is if a Copyhold eschеate be, and the Lord make a Feoffment in fee vpon condition, and entreth for the Condition broken. And the reason in both these cases is, for that the custome or prescription for the time is interrupted.

15. Ass.12. Lord and Tenant by fealty and rent, the Lord is in seisin of his rent, the Lord granteth his Seignory to another and to his heires vpon condition, the Tenant attorneth and payeth his rent to the Grantee, the Condition is broken, the Lord distreyneth for his rent, and Replevin is made he shall be in his former estate, and yet the former seisin shall not enable him to haue an Assise without a new seisin.

8.H.7.7. If Tenant in taile make a Feoffment in fee vpon condition, and dyeth, the issue in taile within age doth enter for the Condition broken, he shall be first in as Tenant in fee simple as heire to his father, and consequently and instantly he shall be remitted. But if the heire be of full age, he shall not be remitted because he might haue had his Formdon against the Feoffee, and the entrie for the Condition is his owne act, but more shall be said hereof in his proper place in the chapter of Remitter.

2.H.6.4. If a man make a Feoffment in fee of Blacke acre and white acre vpon condition, &c. and for breach thereof that he shall enter into Blacke acre, this is good.

43.Ass.47. 13.E.4.4. 2.H.5.7.b. 39.Ass.15. 11.H.5.35. 16.Ass.47. If Tenant for life make a Feoffment in fee vpon condition and entreth for the Condition broken, he shall be Tenant for life againe, but subiect to a forfeiture, for the state is reduced, but the forfeiture is not purged.

Section 326.

CEn meisme le manner est si terres sont dones en le taile, ou lesses a terme de vie ou des ans, sur condition, &c.

IN the same manner it is if lands be giuen in taile, or let for terme of life or of yeares vpon condition, &c.

C *Sur condition, &c.* **This implyeth the seuerall kindes of conditions in Deed before specified.**

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Vid.Sect.332. 19.E.iij.barre 180. 19.R.2.donee rent 10. Pl.com.524. **CEt** *la terre tener tanque ils soyent satisfies ou paies de le rent aderere, &c.* By this it is implyed that if such a Feoffment be made reseruing (b) (for example) 8.markes rent at the feast of Easter, with such a Condition as is aforesaid the Feoffor at the feast day demands the rent, the Feoffee payeth vnto him 6. markes parcell of the rent, the Feoffor entreth into the lands, and taketh the profits towards satisfaction. Afterwards the Feoffee doth tender the two markes residue of the rent to the Feoffor vpon the land who refuseth it. It

(b) 20.E.3.tit.Covenant 3. **CMes lou feoffmēt est fait de certaine terres reseruant certain rent, &c. sur tiel condition, que si le rent soit aderere, q̄ bien lirroit al feoffor, & ses heires dentrer, et la terre tener tanq̄ ils soient satisfies ou payes de le rent aderere, &c. En cest case si le rent soit aderer, & le feoffor ou ses heires enter, le**

BVt where a feoffment is made of certaine lands reseruing a certaine rent, &c. vpon such condition that if the rent bee behinde that it shall be lawfull for the feoffor and his heires to enter, and to hold the land vntill hee bee satisfied or payed the rent behinde, &c. In this case if the rent be behinde, and the feoffor or his

feoffee

feoffee nest pas exclude de ceo tout net, mes le feoffor auera a tiendra la terre et prendra ent les profits tanque il soit satisfie de le rent aderere, & quant il est satisfie, donque poit le feoffee re-enter en mesme la terr̃, & ceo tener come il tenoit adeuãt. Car en tiel cas le feoffor auera la t̃re forsque en maner cõe pur vn distres, tanque il soit satisfie de le rent, &c. cõment q̃ il prendre les profits en le meane temps a son vse demesne, &c.

heires enter, the feoffee is not altogether excluded from this, but the feoffor shall haue & hold the land, and thereof take the proffits, vntill hee bee satisfied of the rent behinde, and when he is satisfied, then may the feoffee re-enter into the same land, and hold it as hee held it before. For in this case the feoffor shall haue the land but in manner as for a distresse vntill he be satisfied of the rent, &c. though hee take the profits in the meane time to his own vse, &c.

hath beene adiudgeth that the Feoffee vpon the refusall may enter into the land, for when the Feoffor is satisfied either by perceptiõ of the profits or by payment or tender and refusall, or partly by the one and partly by the other, the Feoffee may re-enter into the land. And this is within the words of Littleton, viz. (Vntill he be satisfied.) And albeit the Feoffor had accepted part of his rent, yet hee may enter for the condition broken and reteine the land vntill he be satisfied of the whole. All which is worthy of obseruation.

¶ *Et en tiel case le feoffor auera la terre forsque en manner come vn distresse tanque il soit satisfie de la rent. &c.* By this it appeareth that the Feoffor by his re-entry, gaineth no estate of freehold but an interest by the agreement of the parties to take the profits in nature of a Distresse And therefore if a man maketh a Lease for life with a reseruation of a rent and such a condition if he enter for the Condition broken and take the profits of the land Quousque, &c he shall not haue an action of debt for the rent Arere for that the freehold of the Lessee doth continue, and therefore the booke (c) that seemeth to the contrary is false printed, and the true case was of a Lease for yeares as it appeareth afterwards in the same page of the leafe.

(c) 30.E.3 fo.7

But herein also a diuersity worthy the obseruation is implyed, viz. If a man make a Lease for yeares reseruing a rent with a condition that if the rent be behinde, that the Lessor shall re-enter and take the profits vntill thereof he be satisfied, there the profits shall be accounted as parcell of the satisfaction, and during the time that he so taketh the profits hee shall not haue an action of debt for the rent, for the satisfaction whereof he taketh the profits. But if the condition be that he shall take the profits vntill the Feoffor be satisfied or paid of the rent, (without saying thereof) or to the like effect, there the profits shall be accounted no part of the satisfaction but to hasten the Lessee to pay it, and as Littleton here saith, that vntill he be satisfied he shall take the profits in the meane time to his owne vse.

30.E.3.7. *Vid semblable.*
27.H.8.4. 43.E.3.21.
31.Ass.Pl.26.
Vid le statute de Merton ca.6. and obserue the e word Quod inde percipere possint duplicem valorem, &c.
Et ca.7. without this word (Inde.)

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¶ Item diuers parolx (ent auters) y sont, queux p vertue de eux mesmes font estates sur condition vn est le parol Sub conditione: Si come A. enfeoffa B.

ALso diuers words (amongst others) there bee which by vertue of themselues make estates vpon condition, one is the word (*Sub condic'*) as if *A.* infeoffe *B.* of cer-

¶ HEre in this and the next two Sections Littleton doth put foure examples of words that make conditions in Deed, and first Sub conditione. This is the most expresse and proper condition in deed, and therefore our Author beginneth with it.

Sub conditione.
(c) *Mirr. Dier 138.*
27.H.8.15. 13.H.4.mar. Dang. 57. 29 Ass.7.
33.Ass.11. 40.Ass.13.
Bracton vbi supra.
Fleta lib.4.ca.9.
Britton, cap.36. & vbi supra.

¶ *Tale redditũ, &c.* This

Vid.Sect.325.

This (&c.) implieth any other rent or sum in grosse, or any collaterall condition whatsoeuer, either to be performed by the Feoffee, (whereof our Author here putteth his case) or by the Feoffor, and extendeth to all kinds of Conditions in Deede, before specified.

De certaine terre, habendum & tenendum eidem B. & hæredibus suis, sub conditione, quod idem B. & hæredes sui soluant seu solui faciant præfat' A. & hæredibus suis annuatim talem redditum, &c. **En ceste case sans ascun plus dire le Feoffee ad estate sur condition.**

taine land, To haue & to hold to the said B. and his heires, vpon condition that the sayd B. and his heires do pay or cause to be paid to the aforesayd A. and his heires yearely such a rent, &c. In this case without any more saying the feoffee hathan estate vpon Condition.

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Prouiso. Vid.Sect.220. Dier 28.H.8.fol.13. 27.H.8.fol.14.15. 13.H.4. Entre Cong.57. Seignior Cromwells case. Lib.2.fo.71.72 at large. 35.H.8.tit.Condition. Br. Lib.8.89. Frances case.

¶ *Prouiso semper qd' B. soluat, &c.*

Our Author putteth his case where a Prouiso commeth alone. And so it is if a man by Indenture letteth Lands for yeres, Prouided alwaies, and it is couenanted and agreed betweene the sayd Parties, That the Lesse should not alien, and it was adiudged that this was a condition by force of the Prouiso, and a couenant by force of the other words.

This word Prouiso shal be also taken as a limitation or qualification, as hereafter in his proper place shall be sayd. And sometime it shal amount to a Couenant. All which do appeare by the authorities in the margent.*

For the (&c.) in this Section explanation is made in the Section next before.

¶ **Ceaury si les parols fuerõt tiels,** Prouiso semper, quod prædict' B. soluat, seu solui faciat præfato A. talem redditum, &c. **ou fuerõt tiels,** Ita quod prædict' B. soluat seu solui faciat præfato A. talem redditum, &c. **En ceux cases launs pluis dire, le Feoffee nad estate forsque sur condition, issint qne sil ne performast le condition, le feoffor et ses heires poyent entrer, &c.**

Also if the words were such, Prouided alwayes that the aforesayd B. do pay or cause to be payd to the aforesayd A. such a rent, &c. Or these, So that the sayd B. do pay or cause to be payd to the sayd A. such a rent, &c. In these cases without more saying the Feoffee hath but an estate vpon condition: So as if he doth not performe the condition, the Feoffor and his heires may enter, &c.

(*) 27.H.8.15. &c. Ita quod. Fleta lib.4.cap.9. Bracton vbi supra. Britton vbi supra.

¶ *Ou fueront tiels,* Ita quod. **This is the third condition in deed, whereof our Author maketh mention.**

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6.E.2. Entrie Cong.65. 8.E.2. Ass.320. abridged. Quod si Contingat Pasch.37.Eliz.Rot.254. inter Seyer et Hares in Com. Bercs.

¶ *Quod si contingat &c.*

This is the fourth condition in Deed set downe by our Author.

¶ *Denter, &c.* hereby it is euident, That

¶ **Item auks parols sont en vn fait queux causant les tenements estre Conditionals. Sicõe sur tiel feoffment**

Also there bee other words in a Deede which cause the Tenements to be conditionall: As if vpon such feoffment

ment vn Rent eſt reſerue al Feoffor, &c. et puis ſoit mitte en le fait ceſt parol, Quod ſi contingat redditum prædict' aretro fore in parte vel in toto, quod tunc benè licebit a le Feoffor et a ſes heyres dentrer, &c. ceo eſt vn fait ſur condition.

a rent bee reſerued to the feoffor, &c: and afterward this word is put into the deed, That if it happen the aforeſayd rent to be behind in part or in all, that then it ſhall be lawfull for the Feoffor and his heires to enter; &c. This is a Deed vpon condition.

ſome words of themſelues do make a Condition, and ſome other, (whereof our Authour here and in the next Section * putteth an example) do not of themſelues make a Condition without a continuion and clauſe of Re-entrie: And manie times (Si) makes a Condition, and ſometimes a limitation, as hereafter ſhall be ſayd in this Chapter.

* Vi. Sect. 331

3. H. 6. 7. Si. Flet li. 4. ca. 9. Brall. lib. 4 fo. 213. b.

In eſſe poteſt donationi modus, conditio, ſiue cauſa. * Scito quòd (vt) modus eſt (ſi) conditio (quia) cauſa.

* 4. Mar. Dyer 138. b.

Conditio is explained before. Modus is at this day properly taken for a modification, limitation, or qualification, for the which alſo the Law hath appoynted apt words, and becauſe Littleton ſpeaketh of this alſo in the end of this Chapter, I will reſerue this matter to his proper place, where the Reader ſhall perceiue excellent matter of learning touching this point.

Brall. vbi ſupra.

Cauſa, The cauſe or conſideration of the Grant, and herein there is a diuerſitie betweene a gift of lands, and a gift of an annuitie or ſuch like For example, If a man grant an annuitie pro vna acra terræ, in this caſe this word Pro ſheweth the cauſe of the Grant, and therefore amounteth to a condition, for if the acre of land be euicted by an elder title, the annuitie ſhal ceaſe, for ceſſante cauſa ceſſat effectus.

Pro. 14. E. 3. 34

And ſo if an annuitie be granted pro decimis, &c. if the Grantee be vniuſtly diſturbed of the tithes the Annuitie ceaſeth. And ſo it is if an Annuitie be granted pro concilio, and the Grantee refuſe to giue councell, the Annuitie ceaſeth. So if an Annuitie be granted quod præſtaret concilium, this makes the Grant conditionall.

9. E. 4. 20. 32. E. 3. Annu. 30. 14. E. 4. 4. 15. E. 4. 2. b. 8. H. 6. 23. 5. E. 2. Tit. Annu. 44. 41. E. 3. 19. 32. E. 1. Annuities 241. 21. E. 4 49. 22. E. 4. 28. 35. H. 6. 2. 10. E. 3. 44. 5. Ed. 9. E. 4. 20. 15. E. 4. 3.

But if A. pro concilio impenſo, &c. make a feoffement or a leaſe for life, of an acre, or pro vna acra terræ, &c. albeit he denieth Councell, or that the acre be euicted, yet A. ſhall not re-enter, for in this caſe there ought to be legall words of condition or qualification, for the cauſe or conſideration ſhall not auoyd the ſtate of the Feoffee; and the reaſon of this diuerſitie is, for that the ſtate of the land is executed, and the annuitie executorie.

Fleta li. 5 ca. 34. 34. Aſſ. 1. 40. Aſſ. 13.

And yet ſometime in caſe of lands or tenements (Cauſa) ſhall make a Condition. As if a woman giue lands to a man and his heires, cauſa matrimonij prælocuti, in this caſe if ſhee either marrie the man, or the man refuſe to marrie her, ſhe ſhall haue the land againe to her and to her heires. (c) But of the other ſide, if a man giue land to a woman and to her heires, cauſa matrimonij prælocuti, though he marrie her, or the woman refuſe, he ſhall not haue the Lands againe, for it ſtands not with the modeſtie of Women in this kind, to aſke aduice of learned Councell, as the man may and ought: * And the rather for that in the caſe of the woman ſhee may anſwere the cauſe, (for the reaſon aforeſaid) although it be not contained in the Deed) yea though the feoffement be made without Deed.

(c) 5. E. 2. Cui in vita 34. tit. Condition Br. 5. H. 4. 1.

* 12. E. 1. 1. Feoffments & Faits 114. F. N. B. 205. L. Vid. Sect. 365.

If a man maketh a feoffement in fee, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propoſitum, that the Feoffee ſhall doe or not doe ſuch an act, none of theſe words make the ſtate in the land conditionall, for in iudgement of Law they are no words of condition, & ſo was it reſolued, Hil. 18. Eliz. in Com. Banco, in the caſe of a common perſon, but in the caſe of the King the ſayd or the like words doe create a Condition, and ſo it is in the caſe of a will of a common perſon, which caſe I my ſelfe heard and obſerued.

Ad faciend. ea intentione &c. Dyer 138. 7. H. 4. 22. 31. H. 8 tit. Condition 19. Br. Pl. Com. 142. 38. H. 6. 33. 36 37. Doct. & Stud. li 2. ca. 34. 27. H. 8 18. a. 32. E. 3. Brew. 291.

But for the auoyding of a Leaſe for yeares, ſuch preciſe words of condition are not ſo ſtrictly required as in caſe of Freehold and Inheritance. (f) For if a man by Deed make a Leaſe of a manor for yeares, in which there is a clauſe (And the ſayd Leſſee ſhall continually dwell vpon the capitall Meſſuage of the ſayd Manor, vpon paine of forfeiture of the ſaid term) theſe words amount to a Condition.

(f) 7. E. 6 Dier 79. 28. H. 8. Dier 27. a. Sub pœna forisfacturæ.

And ſo it is if ſuch a clauſe be in ſuch a Leaſe, Quod non licebit, to the Leſſee, Dare, vendere, vel concedere ſtatum, & ſub pœna forisfacturæ, this amounts to make the leaſe for yeres defeaſible, & ſo was it adiudged in the Court of Common Pleas (c) in Queene Elizabeths time, and the reaſon of the Court was, That a Leaſe for yeares was but a Contract, which may begin by word, and by word may be diſſolued.

Quod non licebit. 3. E. 6. Di. 65. 66. 4. Mar. 138 (c) Hill. 40. Eliz. Rot. 1610. inter Browne & Ayer. Vid. Pl. Com. 142. Br. & Bo. ſims caſe.

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¶ MEs il est diuersity perenter cest parol (si contingat,&c.) et les parols procheine auantdits. Car ceux parolx, Si contingat,&c.) ne valent riens a tiel condition, sinon que il ad ceux parolx subsequents, que bñ list al Feoffor et a ses heirs dentrer,&c. Mes en les cases auãtdits, il ne besoigne per la Ley, de mitter tiel clause, (scilicet) que le Feoffor et ses heyres poient entrer,&c. pur ceo que ils poyent faire ceo per force des parols auantdits, pur ceo q̃ ils impreignont a eux mesmes en Ley vn condition, scilicet, que le Feoffor et ses heires poyent entrer, &c. Uncore il est communemẽt vse en touts tiels cases auauntdits d̃ mitter les clauses en les faits, scilicet, si le rent soit aderere, &c. que bien lirroit a le Feoffor et a ses heires dentre,&c. Et ceo est bien fait, a cel intent, pur declarer et expresser a les lays gents, que ne sont apprises en la Ley, de le manner et le condition de le feoffement, &c. Sicome home seisie de terre, lessa mesme la terre a vn auter per fait indent pur terme des ans rendant a luy certain rent, il est vse de mitter en le fait, que si le rent soit arere al iour de payment, ou per vn semaigne, ou per vn mois, &c. que adonque bien lirroit al Lessor a distreyñ,&c. vncor le lessor poit destreiñ d̃ cõmon droit p̃ le rent arere, &c. coment que tiels parols ne vnque fueront mises en le Fait,&c.

BVt there is a diuersitie between this word *Si contingat, &c.* and the words next aforesaid, &c. for these words, *Si contingat, &c.* is naught worth to such a Condition, vnlesse it hath these words following, That it shall be lawfull for the Feoffor and his heires to enter,&c. but in the cases aforesayd, it is not necessarie by the law to put such clause, *scilicet*, that the Feoffor and his heires may enter, &c. because they may doe this by force of the words aforesaid, for that they containe in themselues a condition, *scilicet*, That the Feoffor and his heires may enter,&c. yet it is commonly vsed in all such cases aforesayd, to put the clauses in the Deeds, *scilicet*, if the Rent bee behind, &c. that it shall be lawfull to the Feoffor and his heires to enter, &c. And this is well done, for this intent, to declare and expresse to the Common people who are not learned in the Law, of the manner and condition of the Feoffement, &c. As if a man seised of Land, letteth the same Land to another by Deede indented for terme of yeares, rendering to him a certaine Rent, it is vsed to bee put into the Deed, That if the Rent bee behind at the day of payment, or by the space of a weeke or a moneth, &c. that then it shall bee lawfull to the Lessor to distreyne, &c. yet the Lessor may distreyne of common right for the Rent behind,&c. though such words were not put into the Deed,&c.

¶ Ils

¶ *Lx ne beſoigne per la ley de mitter tiel clauſe, &c.* Quæ dubitationis cauſa tollendæ inſeruntur, Communem legem non lædunt. Et expreſſio eorum quæ tacite inſunt, nihil operatur.

¶ *Per vn moys, &c.* Here albeit the clauſe of diſtreſſe bee added, that if the Rent be behind by the ſpace of a Weeke or a Moneth that the Lord may diſtreine, yet he may diſtreine within the Weeke or Moneth, becauſe a Diſtreſſe is incident of Common right to euery Rent Seruice. And the words bee in the affirmatiue, and therefore cannot reſtraine that which is incident of Common right.

The other (&c.) in this Section vpon that which hath beene ſaid are euident.

Sect. 332.

¶ Item, ſi feoffment ſoit fait ſur tiel condition, que ſi le feoffor paya al feoffee a certaine iour, &c. 40. l. dargent, que adonque le feoffor poit reenter, &c. en ceo cas le feoffee eſt appell tenant en morgage, que eſt autant adire en Francois come mortgage, & en Latin, mortuum vadium. Et il ſemble que la cauſe, pur que il eſt appelle mortgage, eſt, pur ceo que il eſtoyt en awerousſi ſi le feoffor voyt payer, al iour limitte tiel ſumme ou non: & ſi ne paya pas, donque le terre que il mitter en gage ſur condition de payment de le money, eſt ale de luy a touts iours, & iſſint mort a luy ſur condition, &c, & ſi paya le money, donqs eſt le gage mort quant a le Tenant, &c.

Item, if a feoffment be made vpon ſuch cõdition, that if the Feoffor pay to the Feoffee at a certain day, &c. 40. pounds of money, that then the Feoffor may reenter, &c. In this caſe the Feoffee is called Tenant in morgage, which is as much to ſay in French, as mortgage, and in Latine *mortuum vadium*. And it ſeemeth that the cauſe why it is called mortgage, is, for that is doubtful whether the Feoffor will pay at the day limited ſuch ſumme or not, and if he doth not pay, then the Land which is put in pledge vpon condition for the payment of the money is taken from him for euer, and ſo dead to him vpon condition, &c. And if hee doth pay the money, then the pledge is dead as to the Tenant, &c.

¶ Mortgage is deriued (c) of two French words, viz. Mort, that is, mortuum, and Gage that is vadium, or pignus. And it is called in Latine mortuum vadium, or morgagium. Now it is called here Morgage, or mortuum vadium, both for the reaſon here expreſſed by Littleton, as alſo to diſtinguiſh it from that which is called viuum vadium. Viuum autem dicitur vadium, quia nunquam moritur ex aliqua parte quod ex ſuis prouentibus acquiratur. As if a man borrow a hundred pounds of another, and maketh an eſtate of Lands vnto him, vntill hee hath received the ſaid ſumme of the iſſues and the profits of the Land, ſo as in this caſe neyther money nor Land dyeth, or is loſt, whereof Littleton hath ſpoken (d) before in this Chapter) and therefore it is called, Viuum vadium.

(c) *Glanuil. lib. 10. cap. 8. & lib. 13. cap. 26. 27.*

(d) *Vide Sect. 327.*

Sect. 333.

¶ Item sicome hõe poit faire feoffment en fee en Mortgage, issint home poit faire done en taile en Mortgage, & vn leas pur terme de vie, ou pur terme des ans en Mortgage, & touts tiels tenants sont appels tenants en Mortgage, solonque les estates, que ils ont en la terre, &c.

ALso as a man may make a feoffment in fee in Morgage, so a man may make a gift in Tayle in Morgage, and a Lease for terme of life, or for tearme of yeares in Morgage. And all such tenants are called tenants in morgage according to the Estates which they haue in the Land, &c.

This Section vpon that which hath beene said needeth no further explication.

Sect. 334.

27.H.8.19.b.

Lib.8.fol.91. Francis case.

¶ Que le feoffor paiera a tiel iour, &c. Albeit Conditions bee not fauoured, yet they are not alwayes taken litterally, but in this case the Law enableth the heire that was not named to performe the Condition for foure causes.

First, Because there is a day limited, so as the heire commeth within the time limited by the Condition, for otherwise he could not doe it, as shall bee said hereafter in this Chapter.

Secondly, For that the Condition descends vnto the heire, and therefore the Law that giueth him an interest in the Condition, giueth him an abilitie to performe it.

Thirdly, For that the Feffee doth receiue no dammage or preiudice thereby (all these reasons are expressly to be collected out of the words of Littleton.) And these things being obserued.

Fourthly, The intent and true meaning of the Condition shall bee performed. And where it is here said, that the heire may tẽder al iour assesse, &c. herein is implyed, that

¶ Item si feoffment soit fait en mortgage sur condition que le feoffor payera tiel summe a tiel iour, &c. come est enter eux per lour fait endent accorde & limit, coment que le feoffor morust deuãt le iour de payment, &c. vncore si le heire feoffor paya mesme le summe de money a mesme le iour a le feoffee, ou tender a luy les deniers, et le feoffee ceo refusa de receiuer, donque poit lheire entrer en l'terre, et vncore le condition est, que si le feoffour payera tiel summe a tiel iour, &c. nient feasant mention en le condition

ALso if a feoffment bee made in morgage vpon condition, that the Feoffor shall pay such a summe at such a day, &c. as is betweene them by their Deed indented, agreed, and limited, although the Feoffor dyeth before the day of payment, &c. yet if the heire of the Feoffor pay the same summe of money at the same day to the Feoffee, or tender to him the money, and the Feoffee refuse to receiue it. Then may the heire enter into the Land, and yet the condition is, that if the Feoffor shall pay such a summe at such a day, &c. not making men-

dascun

dascun payment de-
ste fait per son heire,
mes pur ceo que le
heire ad interesse de
droit en l'condition,
&c. et lentent fuit
forsque que les deni-
ers serront paies al
iour assesse, &c. et le
feoffee nad pluis dã-
mage, si il sont pay
per heire, que sil fuit
pay per le pier, &c.
Et pur ceste cause, si le
heire paya les deni-
ers, ou tendera les
deniers a le iour as-
sesse, &c. et lauter ceo
refusa, il poit entrer,
&c. Mes si vn estrãge
de sa teste demesne,
que nad ascun inter-
esse &c. voile tender
les auantdits deni-
ers al feoffee a le iour
assesse, le feoffee nest
pas tenus de ceo re-
ceiuer.

tion in the Condition of any payment to bee made by his heire, but for that the heire hath interest of Right in the Condition, &c. and the intent was but that the money should bee payed at the day assessed, &c. and the Feoffee hath no more losse if it bee paid by the heire, thẽ if itwere paid by the Father, &c. therefore if the heire pay the money or tender the money at the day limited, &c. and the other refuse it, he may enter, &c. But if a stranger of his own head, who hath not any interest, &c. will tender the aforesaid money to the Feoffee at the day appointed, the Feoffee is not bound to receiue it.

the Executors or Administrators of the Mortgagor, or in default of them the Ordinarie may also tender as shall be said (f) hereafter in this Chapter. But what if the Condition had beene, if the Mortgagor or his heires did pay, &c. and hee dyed before the day without heire, so as the Condition became impossible, here it is to be obserued, that where the Condition becommeth impossible to be performed by the act of God, as by death, &c. the state of the Feoffee shall not bee auoyded, as shall bee said hereafter in this Chapter. And therefore the Law here inableth the heire (of whom no mention was made in the Condition) to performe the Condition least the Inheritance should be lost, wherein diuers diuersities are worthy of obseruation.

(f) *Vide Sect.* 337.

First, betweene a Condition annexed to a state in Lands or Tenements vpon a feoffment, gift in tayle, &c. and a Condition of an Obligation, Recognizance or such like. (g) For if a Condition annexed to Lands be possible at the making of the Condition, and become impossible by the act of God, yet the state of the Feoffee, &c. shall not bee auoyded. As if a man maketh a feoffment in Fee vpon Condition, that the Feoffor shall within one yeare goe to the Citie of Paris about the affaires of the Feoffee, and presently after the Feoffor dyeth, so as it is impossible by the act of God that the Condition should bee performed, yet the Estate of the Feoffee is become absolute, for though the Condition be subsequent to the state, yet there is a precedencie before the re-entrie, viz. the performance of the Condition. And if the Land should by construction of Law be taken from the Feoffee, this should worke a dammage to the Feoffee, for that the Condition is not performed which was made for his benefit. And it appeareth by Littleton, that it must not bee to the dammage of the Feoffee. And so it is if the Feoffor shall appeare in such a Court the next Tearme, and before the day the Feoffor dyeth, the Estate of the Feoffee is absolute. (h) But if a man be bound by Recognizance or Bond with Condition that he shall appeare the next Tearme in such a Court, and before the day the Conusor or Obligor dyeth, the Recognizance or Obligation is saued, and the reason of the diuersitie is because the state of the Land is executed and setled in the Feoffee, and cannot bee redeemed backe againe but by matter subsequent, viz. the performance of the Condition. But the Bond or Recognizance is a thing in action, and executorie, whereof no aduantage can be taken vntill there be a default in the Obligor, and therefore in all cases where a Condition of a Bond, Recognizance, &c. is possible at the time of the making of the Condition, and before the same can be performed, the Condition becomes impossible by the act of God, or of the Law, or of the Obliger, &c. there the Obligation, &c. is saued. But if the Condition of a Bond, &c. be impossible at the time of the making of the Condition, the Obligation, &c. is single. And so it is in case of a feoffment in fee with a Condition subsequent, that is impossible, the state of the Feoffee is absolute, but if the Condition precedent bee impossible, no

(g) *Pl.Com.* 456. *Wrotsleys case.* 14.H.7.3. 15.H.7.1. 14.E.4.3. 38.H.6.2.3.

(h) 15.H.7.18. 31.H.6. barre 60. 18.E.4.17. 9.Eliz.262. *Dier lib.*3.22. *Laughters case.* 38.H.6.2.

*Fleta lib.*4.*cap.*9. & *Bracton & Britton vbi supra.*

14.H.8.28. 19.H.7.22. 4.H.7.4.8.E.4.1. 28.H.8.25. lib.5.fo.22. Laughters caſe & 75. 39.E.3.5. 17.H.6. Obligat.18. 5.Eliz.Dier 222

ſtate or intereſt ſhall growe thereupon. And to illuſtrate theſe by examples you ſhall vnderſtand. If a man be bound in an Obligation, &c with condition that if the Obligor doe goe from the Church of St. Peter in Weſtmin. to the Church of St. Peter in Rome within three houres that then the Obligation ſhall be voide. The Condition is voyde and impoſſible and the Obligation ſtandeth good.

And ſo it is if a feoffment be made vpon condition that the Feoffee ſhall goe as is aforeſaid, the ſtate of the Feoffee is abſolute and the condition impoſſible and voyde.

* Pl.com.Fullers caſe 272.

* If a man make a Leaſe for life vpon condition that if the Leſſee goe to Rome as is aforeſaid that then he ſhall haue a fee, the condition precedent is impoſſible and voyde, and therefore no fee ſimple can growe to the Leſſee.

35.H.6.tit.barre 262. 37.H.6.barre 60. 2.E.3.9. 9.Eliz.Dier 262. 28.H.8.30.

If a man make a feoffment in fee vpon condition that the Feoffee ſhall re-infeoffe him before ſuch a day, and before the day the Feoffor diſſeiſe the Feoffee and hold him out by force vntill the day be paſt, the ſtate of the Feoffee is abſolute, for the Feoffor is the cauſe wherefore the condition cannot be performed, and therefore ſhall neuer take aduantage for non performance thereof. (i) And ſo it is if A. be bound to B. that I.S. ſhall marry Ioan G. before ſuch a day, and before the day B. marry with Iane, he ſhall neuer take aduantage of the bond, for that he himſelfe is the meane, that the condition could not be performed. And this is regularly true in all caſes.

(i) 4.H.7.4. 30.H.8.Dier 42. 11.H.4.57. in protection. 10.H.7.18.

But it is commonly holden (k) that if the condition of a Bond, &c. be againſt law, that the bond it ſelfe is voyde.

(k) Vid. Bracton, Britton Fletawbs ſupra.

But herein the Law diſtinguiſheth betweene a condition againſt Law for the doing of any act that is Malum in ſe, and a condition againſt Law (that concerneth not any thing that is malum in ſe) but therefore is againſt Law, becauſe it is either repugnant to the ſtate or againſt ſome Maxime or rule in Law. And therefore the common opinion is to bee vnderſtood of conditions againſt Law for the doing of ſome act that is malum in ſe, and yet therein alſo the Law diſtinguiſheth. As if a man be bound vpon condition that he ſhall kill I.S the bond is voide.

Bracton lib.3.fo.100. 2.H.4.9. 8.E.4.12.b. 2.E.4.2.& 3. 4.H.7.4.b. 10.H.7.22. 14.H.8.28. 42.E.3.6.23.

But if a man make a feoffment vpon condition that the Feoffee ſhall kill I.S. the ſtate is abſolute, and the condition voyde.

2.H.4.9.

Pl.Com.Brownings caſe 133

If a man make a feoffment in fee vpon condition that he ſhall not alien, this condition is repugnant and againſt Law, and the ſtate of the Feoffee is abſolute (whereof more ſhall be ſaid in his proper place.) But if the Feoffee be bound in a bond, that the Feoffee or his heires ſhall not alien this is good, for he may notwithſtanding alien if he will forfeit his bond that he himſelfe hath made.

So it is if a man make a feoffment in fee vpon condition that the Feoffee ſhall not take the profits of the land this condition is repugnant and againſt Law, and the ſtate is abſolute.

y.H.6.43.b. 21.H.6.33. 21.H.7.11. 21.H.7.30. 30.E.4.8. Pl.Com. in Brownings caſe 133.a. 27.H.8.

But a bond with a condition that the Feoffee ſhall not take the profits is good. If a man be bound, with a condition to enfeoffe his wife, the condition is voide and againſt Law, becauſe it is againſt a maxime in Law, and yet the bond is good, but if he be bound to pay his wife money that is good. Et ſic de ſimilibus whereof there bee plentifull Authorities in our bookes.

Vid. Sect.325.

¶ *Tender les deniers al iour aſſeſſe, &c.* Note hereby is implied that albeit a conuenient time before ſunne ſet be the laſt time giuen to the Feoffor to tender, yet if he tender it to the perſon of the mortgage at any time of the day of payment, and he refuſeth it, the condition is ſaued for that time.

¶ *Il poet enter, &c.* And ſo may his heire after his death.

¶ *Mes ſi eſtranger de ſa teſte demeſne que nad aſcun intereſſe, &c. vnle tender les anandits deniers al feoffee al iour aſſeſſe, le feoffee neſt pas tenus dec receiuer.* Nota by this period and the (&c.) it is implyed that if the mortgager die, his heire within age of 14. yeares (the land being holden in Socage) the next of kinne to whom the land cannot diſcend being his gardein in Socage may tender in the name of the heire, becauſe he hath an intereſt as gardeine in Socage. Alſo if the heire be within age of 21. yeares, and the land is holden by Knights ſeruice, the Lord of whom the land is holden may make the tender for his intereſt which he ſhall haue when the condition is performed, for theſe in reſpect of their intereſt are not accounted eſtrangers.

Vid Sect.401. Hill.28.Eliz.in banco Regis Inter Watkins & Aſtwick Proteſtis in Com. Denom. 45 E.3.tit.Releaſe 28. 32.E.1.tit.Annuity 51. 33.H.6.18.

But if the heire be an Ideot, of what age ſoeuer, any man may make the tender for him in reſpect of his abſolute diſability, and the Law in this caſe is grounded vpon charity, and ſo in like caſes.

¶ *Le Feoffee neſt pas tenus de ceo receiuer.* And note that Littleton ſaith, that he is not bound to receiue it at a ſtrangers hand. But if any ſtranger in the name of

36.H.6.tit.barre.166. 33.E.1.tit.Annuity 51. 33.E.3.iudgement 254.

of the Mortgagor or his heire (without his consent or vntuity) tender the money and the mortgagee accepteth it, this is a good satisfaction, and the Mortgagee or his heire agreeing thereunto may re-enter into the land. Omnis ratihabitio retro trahitur & mandato equiparatur. But the Mortgagor or his heire may disagree thereunto if he will.

Section 335.

¶ ET memorandum que en tiel cas, lou tiel tender de le money est fait, &c. & le feoffee ô receiuer ceo refusa, per que le feoffor ou ses heires entront, &c. donque le feoffee nad ascun remedy dauer l' money per le cõmon ley, pur ceo que il serra rette sa follie que il refusa le money quant vn loyal tender de ceo fuit fait a luy.

AND be it remembred that in such case, where such tender of the money is made, &c. and the feoffee refuse to receiue it, by which the feoffor or his heires enter, &c. then the feoffee hath no remedy by the cõmon law to haue this money, because it shall bee accounted his owne folly that hee refused the money, when a lawful tender of it was made vnto him.

¶ *Tender de le money est fait, &c.* Here is implyed at the due time and place according to the condition.

¶ *Entront, &c. viz.* into the lands or tenements.

¶ *Donque le feoffee nad ascun remedie dauer le money per le common ley, &c.* And the reason is because the money is collaterall to the land, and the Feoffee hath no remedy therefore. 8.E.2.tit.Ass.389. 31.Ass.32.

If an Obligation of an hundred pound be made with condition for the payment of fifty pound at a day, and at the day the Obligor tender the money, and the Obligee refuseth the same; yet in action of debt vpon the Obligation, if the Defendant pleade the tender and refusall, he must also pleade that he is yet ready to pay the money and tender the same in Court. But if the Plaintife will not then receiue it but take issue vpon the tender, and the same be found against him, he hath lost the money for euer. 22.H.6.39. 31.E.4.25. 22.E.3.5. Lib.9.fo.79. H.Peyton's case.

If a man be bound in 200. quarters of wheate for deliuery of a 100. quarters, if the Obligor tender at the day the 100. quarters, &c. he shall not pleade Vncore prist, because albeit it be the parcell of the condition, yet they be Bona peritura, and it is a charge for the Obligor to keepe them. And the reason wherefore in the case of the Obligation the some mentioned in the condition is not lost by the tender and refusall, is not only for that it is a dutie and parcell of the obligation, and therefore is not lost by the tender and refusall, but also for that the Obligee hath remedy by Law for the same. And in this case, Liberata pecunia non liberat offerentem. 8.E.2.tit.Ass.389.

But if a man make a single bond, or knowledge a Statute or Recognizance & afterwards made a defeasance for the payment of a lesser summe at a day, if the Obligor or Conusor tender the lesser summe at the day, and the Obligee or Conusee refuseth it, he shall neuer haue any remedy by Law to recouer it, because it is no parcell of the summe contained in the Obligation, Statute, or Recognizance, being contayned in the defeasance made at the time or after the Obligation, Statute, or Recognizance. And in this case in pleading of the tender and refusal the party shall not be driuen to pleade, that he is yet ready to pay the same or to tender it in Court: Neither hath the Obligee or Conusee any remedy by Law to recouer the summe contained in the Defeasance, (o) And so it is if a man make an Obligation of 100. pound with condition for the deliuery of Corne or timber, &c. or for the performance of an arbitrement, or the doing of any act, &c. This is collaterall to the Obligation, that is to say, is not parcell of it, and therefore a tender and refusall is a perpetuall barre. 7.H.4.18. 5.Mar.Dier.150. 21.E.4.25. 22.E.3.5. 33.H.6.2.b. 17.Ass.pl.2. 20.E.4.1.b. 9.H.6.16. 36.H.6.26. 15.E.4.1. 16.H.7.13. 18.E.3.53. 7.E.4.4.b. 19.H.8.12. 27.H.8.1.a. 22.H.6.39. tit. Abatement 11. 49.E.3.3. 19.H.6.12. (o) Henry Peyton's case vbi supra.

But if a man be bound to make a feoffment in fee to the Obligee, and he make a Lease and a release to him and his heires, albeit this be a collaterall condition, yet is it well performed, because this amounts in Law to a feoffment. 31.Ass.25. 11.H.4.33. 1.H.6.8. 1.E.4.17. 2.E.4.3. Pl.Com. Fogassis case, fo.6.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawfull money of England either of Gold or Siluer, is of two sorts, viz. the English money coyned by the Kings authority Lib.5.fo.114.115. Wades case. Lib.8.fo.78.

authority, or forraine coyne by Proclamation made currant within the Realme. Coine, cuna dicitur a cudendo, of coyning of money. In French Coine signifieth a coyner because in ancient time money was square with corners, as it is in some Countries at this day. Some say that Coine dicitur a κοινος id est, communis, quod sit omnibus rebus communis. Moneta dicitur à monendo, not only because he that hath it, is to be warned prouidently to vse it, but also because Nota illa de authore & valore admonet. Pecunia dicitur a Pecu, beasts, Omnes enim veterum diuitiæ in animalibus consistebant, and it appeareth that in Homers time, there was no money but exchange of cattell, &c.

Aristotle Lib.5.cap.8.

(*) 9.H.5.Stat.2.Cap.7.

Nummus ἀπο τῦ νόμυ quia lege fit non natura. Vide *the Statute of 9.H.5 of the noble, half noble, and farthing of gold, which is the fourth part of a noble, and that is 20. pence.

Section 336.

12.E.3.Condic.8. 13.Ed.3. ibid.10. 12.Ass.5.

¶ *Et sil faile de paier les deniers, &c.*

If a man make a feoffment of Lands, To haue and to hold to him and his heires, vpon condition, That if the Feoffee pay to the Feoffour at such a day twentie pounds, that then the Feoffee shall haue the lands to him and his heires; if the condition had not proceeded further, it had beene void, for that the Feoffee had a fee simple by the first words, and therefore the words subsequent are materially added, (And if he faile to pay the money, &c.)

¶ Item si feoffment soit fait sur tiel condition, Que si le Feoffee paya al feoffor a tiel iour inter eux limit xx.l. adonques le Feoffee auera la Terre a luy et a ses heires, et sil faile de payer les deniers a le iour assesse, que adonque bien list a le Feoffor ou a ses heyres dentrer, &c. et puis deuant le iour assesse, le Feoffee venda la terre a vn auter, et de ceo fait feoffment a luy, en cest case si l'second Feoffee voile tender le summe de les deniers a le iour assesse a le Feoffor, et le Feoffor ceo refusa, &c. donque le second Feoffee ad estate en la terre clerement sans condition. Et la cause est, pur ceo que le second Feoffee auoit interest en le condition pur saluation d'son Tenancie. Et en cest case il semble que si le primer Feoffee apres tiel vender de la Terre, voile tender le money a le

Also if a Feoffement be made on this condition, That if the Feoffee pay to the Feoffor at such a day between them limitted, twenty pounds, then the feoffee shal haue the Land to him and to his heires, and if he faile to pay the money at the day appointed, that then it shall bee lawfull for the Feoffor or his Heyres to enter, &c. and afterwards before the day appointed the Feoffee sel the Land to another, and of this maketh a Feoffement to him, in this case if the second Feoffee wil tender the sum of money at the day appointed, to the Feoffor, and the feoffor refuseth the same, &c. then the second Feoffee hath an estate in the land cleerely without condition. And the reason is, for that the second Feoffee hath an interest in the cõdition for the safegard of his tenancy: and in this case it seemes, that if the first feoffee after such sale of the land, wil tender the

¶ *Le second Feoffee voile tender le summe des deniers, &c.*

Albeit the second Feoffee bee not named in the Condition, yet shall he tender the summe, because hee is priuie in estate, and in iudgement of Law hath an estate and interest in the condition, (as Littleton heere saith) for the saluation of his Tenancie, Vi.Sect.334. And note he that hath interest in the conditiõ on the one side, or in the land on the other, may tender.

La.5.fo.96,97.Goodales case.

La.5.fo.114,115.Wades case.

And it is to bee ob-

le iour assesse, &c. a le feoffor, ceo serra assets bone pur saluation de estate de le second Feoffee, pur ceo que le prim Feoffee fuit priuie a le condition, & issint le tender de ascun de eux deux est assets bon, &c.

money at the day appointed, &c. to the feoffor, this shall be good enough for the safegard of the estate of the second feoffee, because the first feoffee was priuie to the condition, and so the tender of either of them two is good enough, &c.

serued also, That the feoffee may tender any money that is currant within the Realme, albeit it bee forreine coine, so as it bee currant by Act of Parliament, or by the Kings proclamation, as hath beene said.

¶ *Tender le summe.* The Feoffee may tender the money in purses or bagges, without shewing or telling the same, for he doth that which he ought, viz to bring the money in purses or bagges. Which is the vsuall manner to carry money in, and then it is the part of the party that is to receiue it, to put it out and tell it.

¶ *A primer Feoffee.* Here it appeareth, that the first Feoffee may notwithstanding his feoffment, pay the money to the Feoffor, because he is partie and priuie to the Condition, and by his tender may saue the state of his Feoffee, which in all good dealing he ought to doe.

Sect. 337.

¶ Item si feoffement soit fait sur condition, Que si le Feoffor paya certaine summe dargent al Feoffee, adonqs bien lirroit a Feoffor et a ses heirs dentrer: en cest case si le feoffor deuie deuant le payment fait, et lheire voile tender al feoffee les deniers, tiel tender ē voyd, pur ceo que le temps deins quel ceo doit estr̄ fait est passe, car quaunt le condition est, que si le feoffor paya les deniers al Feoffee, &c. ceo est tant adire, que si le feoffor durant sa vie paya les deniers al feoffee, &c. et quant le feoffor morust, don-

ALso if a feoffment bee made vpon condition, That if the Feoffor pay a certaine summe of money to the Feoffee, then it shal be lawfull to the feoffor and his heyres to enter: in this case if the feoffor die before the payment made, and the heire will tender to the feoffee the money, such tender is void, because the time within which this ought to bee done, is past. For when the condition is, That if the Feoffor pay the money to the Feoffee, &c. this is as much to say, as if the Feoffor during his life pay the money to the Feoffee, &c. & when the feoff-

¶ This diuersitie is plaine and euident, & agreeth with our (a) Bookes, and yet somwhat shal be obserued hereupon: for here it appeareth, That seeing no time is limitted, the Law doth appoint the time, & that is, during the life of the feoffor. Wherein diuers diuersities are worthy the obseruation:

(a) 14.H.7.31. 15.H.7.1.

1.

First, Betweene this case that Littleton here putteth of the condition of a Feoffment in fee, for the payment of money where no time is limited, and the condition of a Bond for the payment of a summe of money where no time is limitted: for in such a condition of a Bond the money is to be payd presently, that is, in conuenient time. (b) And yet in case of a condition of a bond there is a diuersitie betweene a condition of an obligation, which concernes the doing of a transitorie act without limitation of any time, as payment of money, deliuery of Charters, or the like, for there the condition is to bee performed presently, that is, in conuenient time, & when by the condition of the Obligation the act that is to bee done

44.E.3.9.33.H.6.45.& 48.b. 4.E.4.20. 9.E.4.22. 15.E.4.30. 21.E.4.38.b. 9.H.7.17.b. 10.H.7.15. 14.H.8.21.a.& 29.b.

(b) *Lib.6.fo.30.31. Bathies case.* 33.H.6.47.48.

2.

done to the Obligee is of his owne nature locall, for there the Obligor (no time being limited) hath time during his life, to performe it, as to make a Feoffment, &c. if the Obligee doth not hasten the same by request. In case where the condition of the Obligation is locall, there is also a diuersitie, when the concurrence of the Obligor and the Obligee is requisite, (as in the sayd case of the Feoffment) and when the Obligor may performe it in the absence of the Obligee, as to knowledge satisfaction in the Court of Kings Bench, * although the knowledge of satisfaction is locall, yet because hee may doe it in the absence of the Obligee, he must doe it in conuenient time, and hath not time during his life.

(*) Boothies case, vbi supra.

4. Another diuersity is, where the condition concerneth a transitory or locall act, and is to be performed to the Feoffee or obligee, and where it is to be performed to a stranger: as if A. be bound to B. to pay ten pounds to C. A. tender to C. and hee refuseth, the Bond is forfeited, as in this Section shall bee said more at large.

5. Another diuersitie is betweene a condition of an Obligation, and a condition vpon a Feoffment, where the Act that is locall is to be done to a stranger, and where to the Obligee or Feoffor himselfe. As if one make a feoffment in fee, vpon condition that the Feoffee shall infeoffe a stranger, and no time limitted, the Feoffee shall not haue time during his life to make the feoffment, for then he should take the profits in the meane time to his owne vse, which the Estranger ought to haue, and therefore he ought to make the feoffment as soone as conueniently he may, and so it is of the condition of an Obligation. But if the condition be, That the Feoffee shall re-infeoffe the Feoffor, there the Feoffee hath time during his life, for the priuitie of the condition betweene them, vnlesse he be hastened by request, as shall bee said hereafter.

Boothies case, li.6.fo.31. Lib.2 fo.79.b Seignior Cromwells case. 43 E.3.9. 21.E.4.41. 2.E.4.3.4. 19.H.6.67.73.76. 4.E.4.4.b. 26.H.8.9.b.

6. Another diuersitie is, when the Obligor or Feoffee is to enfeoffe a stranger, as hath bin said, and when a stranger is to infeoffe the Feoffee or obligee: As if A. infeoffe B. of Blacke Acre, vpon condition that if C. infeoffe B. of White Acre, A. shall re-enter. C. hath time during his life, if B. doth not hasten it by request, and so of an Obligation.

7. But in some cases albeit the condition be collaterall, and is to be performed to the Obligee, and no time limited, yet in respect of the nature of the thing, the Obligor shall not haue time during his life to performe it. As if the condition of an Obligation be, to grant an annuitie or yearely rent to the Obligee during his life, payable yearely at the feast of Easter, this annuity or yearely rent must be granted before Easter, or else the Obligee shall not haue it at that feast during his life, & sic de similibus, and so was it resolued by the Iudges (*) of the Common Pleas in the Argument of Andrews case, which I my selfe heard.

14.E.3.Dier.138 Li.2 fo.80. Seignior Cromwells case.

(*) Vid Dyer 14.El.311.

8. Lastly, when the Obligor, Feoffor, or Feoffee is to doe a sole act or labour, as to goe to Rome,

ques le temps de le tender est passe. Mes autrement est lou vn iour de payment est limit, et le feoffor deuie deuaunt le iour, donque poet le Heire tender les deniers come est auauntdit, pur ceo que le temps de le tender ne fuyt passe per le mort del feoffor. Auxy il semble que en tiel case lou le feoffor deuy deuant le iour de payment, si les Executors de le feoffor tendront les deniers al feoffee al iour de payment, cel tender est assets bon. Et si le feoffee ceo refuse les heires de feoffor poient entrer, &c. Et le cause est, pur ceo que les Executors representent l'person lour Testator, &c.

for dyeth, then the time of the tender is past. But otherwise it is where a day of payment is limited, and the Feoffor die before the day, then may the heire tender the money as is aforesaid, for that the time of the tender was not past by the death of the Feoffor. Also it seemeth, That in such case where the Feoffor dyeth before the day of payment, if the Executors of the Feoffor tender the money to the Feoffee at the day of payment, this tender is good enough, and if the Feoffee refuse it, the heyres of the Feoffor may enter, &c. And the reason is, for that the Executors represent the person of their Testator, &c.

Rome, Jerusalem, &c. In such and the like cases, the Obligor, Feoffor, or Feoffee hath time during his life and cannot bee hastened by request. And so it is if a stranger to the Obligation or Feoffment were to doe such an act, he hath time to doe it at any time during his life.

¶ *Si les executors del feoffor tendront, &c.* So as now it appeareth that either the heire of the Feoffor, or his Executors may (when a day is limited) pay the money, and so also may the Administrator of the Feoffor doe, if the Feoffor dye intestate, (f) and this may the Ordinarie doe if there be neyther Executor nor Administrator, as hath beene said. *Lib.5.fol.96.57. Goodales Case.* (f) *Vide Sect.334.*

¶ *Et le feoffee refuse, les heires del feoffor poient enter, &c.* Nota a tender by the Executors or Administrators, and a refusall doth giue the heire of the Feoffor a title of entrie. And hereby this (&c.) is a diuersitie implyed, when a tender and refusall shall giue a third person title of entrie.

If a man be bound to A. in an Obligation with Condition to infeoffe B. (who is a meere stranger) before a day, the Obligor doth offer to enfeoffe B. and he refuseth, the Obligation is forfeit, for the Obligor hath taken vpon him to enfeoffe him, and his refusall cannot satisfie the Condition, because no feoffment is made, but if the feoffment had beene by the Condition to be made to the Obligee, or to any other for his benefit or behoofe, a tender and refusall shall saue the Bond, because he himselfe vpon the matter is the cause wherefore the Condition could not be performed, and therefore shall not giue himselfe cause of action. But if A. be bound to B. with Condition that C. shall enfeoffe D. In this case if C. tender, and D. refuse, the Obligation is saued, for the Obligor himselfe vndertaketh to doe no act, but that a stranger shall infeoffe a stranger. And it is holden in Bookes, (h) that in this case it shall be intended, that the feoffment should be made for the benefit of the Obligee. Some to reconcile the Bookes seeme to make a difference betweene an expresse refusall of the stranger, and a readinesse of the Obligor at the day and place to make performance, and the absence of the stranger: but that can make no difference. I take it rather to bee the error of the Reporter; and the Records themselues are necessary to be seene, for the Law herein is, as it hath beene before declared. *33.H.6.16.17. 36.H.6.8. 2.E.4.2.3. 15.E.4.5 6. 22.E.4.13. 32.E 3.barre 264 7.E.3.29. 9.H.7.17. 10.H.7.14.b. 25.H.8. Dyer 56.lib.5.fol.23. Lambes case.* (h) *8.E.4.14.2.E.4. vbi supra.*

If I enfeoffe one in fee vpon condition to infeoffe I.S. and his heires, the Feffee tenders the feoffment to I.S. and he refuseth it, the Feoffor may reenter, for by the expresse intent of the Condition, the Feffee should not haue and retaine any benefit or estate in the land, but as it were an instrument to conuey ouer the land. *19.H.6.34.*

But in that case if the Condition were to make a gift in tayle to I.S. and he refuseth it, and a tender and refusall is made, there the Feoffor shall not reenter, for that it was intended that the Feffee should haue an estate in the Land. And so it is if a feoffment bee made vpon Condition that the Feoffee shall grant a Rent Charge to a stranger, if the Feoffee tender the grant and he refuseth, the Feoffor shall not reenter, because the Feoffee was to retaine the land, which points are worthy of due obseruation. *2.E.4.Entre conge 25.*

Here in the case of Littleton, when the Executors make the tender, and the Feoffee refuseth, albeit the heire be a third person, yet is he no stranger, but hee and the Executors also are priuies in Law.

¶ *Le person del testator, &c.* This is to bee vnderstood concerning goods and chattels either in possession or in action; and the Executor doth more actually represent the person of the Testator, then the heire doth the person of the Ancestor. For if a man bindeth himselfe, his Executors are bound though they bee not named, but so it is not of the heire: Furthermore, here the Administrators and the Ordinary also are implyed, as before hath beene said.

Sect. 338.

¶ ET nota que en touts cases de condition de payment d certaine summe en grosse, touchant terres ou tenements, si loyall tender soit vn

AND note that in all cases of condition for payment of a certaine summe in grosse touching lands or tenements, if lawfull tender be once re-

¶ This is to be vnderstood, that hee that ought to tender the money is of this discharged for euer to make any other tender, but if it were a dutie before, though the Feoffor enter by force of the Condition, yet the debt or dutie remayneth. As if A. borroweth a hundred *Vide Sect. sequen.*

hundred pound of B. and after morgageth land to B. vpon Condition for payment thereof. If A. tender the money to B. and hee refuseth it, A. may enter into the Land, and the land is freed for euer of the Condition, but yet the debt remayneth, and may bee recouered by Action of Debt. But if A. without any lone, debt, or dutie preceding into the B. of land vpon Condition for the payment of a hundred pounds to B. in nature of a gratuitie or gift. In that case if he tender the hundred pound to him according to the Condition and her refuseth it, B. hath no remedie therefore, and so is our Author in this and his other cases of like nature to be understood.

foits refuse, celuy q̃ duisoit tender le money est d̃ ceo assouth, & pleinm̃t discharge per touts temps apres.

fused, he which ought to tender the money is of this quite and fully discharged for euer afterwards.

Section 339.

¶ *Aiera tiel ſome a tiel iour, &c.* Here is implyed that this payment ought to bee reall and not in shew or appearance. For if it bee agreed betweene the Feoffor and the Executors of the Feffee, that the Feoffor shall pay to the Executors but part of the money, and that yet in appearance the whole summe shall bee paid, and that the residue shall bee repaid, and accordingly at the day and place, the whole summe is paid, and after the residue is repaid, this is no performance of the Condition, for the state shal not bee denested out of the heire which is a third person, without a true and effectuall payment, and not by a shadow or colour of payment, and the agreement precedent doth guide the payment subsequent.

18.E.4.fol.18. Lib.5.fol.96. Goodales Case.
19.H.6.54. 20.E.3. Account Pl.70.

And by this Section also it appeareth, that the Executors do more represent the person of the Testator, then the heire doth to the Auncestor, for though the Executor be not named, yet the

Item ſi le feoffee en morgage, deuant le iour de payment que ſerroit fait a luy face ſes executors et deuie, et ſon heire enter en le terre come il deuoit, &c. il ſemble en ceſt cas que le feoffor doit payer le money al iour aſſeſſe as executors, et nemy al heire le feoffee, pur ceo que le money al commencemẽt trenchast al feoffee en maner come vn dutie, et ſerra entendue que leſtate fuit fait per cauſe de le prompter de le money per le feoffee, ou pur cauſe dauter dutie. Et pur c̃ le payñt ne ſerra fait al heire, come il ſemble. Mes les parols del condition poyent eſtre tiels, que le payment ſerra fait al heire, come ſi le condition fuit, que ſi le feoffor paya al feoffee, ou a ſes heires, tiel ſumme a tiel iour, &c. la apres la

Also if the Feoffee in morgage before the day of payment which should bee made to him, makes his Executors and die, and his heire entreth into the land as he ought, &c. It seemeth in this case that the Feoffour ought to pay the money, at the day appointed to the Executors, and not to the heire of the Feoffee, because the money at the beginning trenched to the Feoffee in manner as a dutie and shall be entended that the estate was made by reason of the lending of the money by the Feoffee, or for some other dutie, and therefore the payment shall not be made to the heire, as it seemeth, but the wordes of the Condition may be such, as the payment shall be made to the heire. As if the Condition were, that if the Feoffor pay to the Feoffee or to his heires such a summe at

la mort le feoffee, il mourust deuant l'iour limit, l'payment doit estre fait al heir al iour assesse, &c.

such a day, &c. there after the death of the feoffee, if hee dieth before the day limitted the payment ought to be made to the heire at the day appointed, &c.

law appoints him to receiue the money, but so doth not the Law appoint the heire to receiue the money vnlesse he bee named.

¶ *Doit estre fait al heire al iour assesse, &c.* And here it also appeareth that if the condition vpon the Morgage be to pay to the Morgagee or his heires the money, &c. and before the day of payment the Morgagee dieth, the Feoffor cannot pay the money to the Executors of the Morgagee; For Littleton saith that in this case the payment ought to be made to the heire. Et in hoc casu designatio vnius personæ est exclusio alterius, & expressum facit cessare tacitum. And the Law shall neuer seeke out a person, when the parties themselues haue appointed one. But if the condition be to pay the money to the Feoffee his heires or Executors, then the Feoffor hath election to pay it either (m) to the heire or Executors.

Vid. lib. 5. fo. 96. Goodales case Dier 2. Eliz. 181. 44. E. 3. 1. b.

(m) 12. E. 3. *Condition* 8. & 10.

If a man make a feoffment in fee vpon condition that the Feoffee shall pay to the Feoffor his heires or assignes 20. pound at such a day, and before the day the Feoffor make his Executors and dyeth, the Feoffee may pay the same either to the heire or to the Executors, for they are his assignes in Law to this intent. But if a man make a feoffment in fee vpon condition, that if the Feoffor pay to the Feoffee his heires or assignes 20. pound before such a feast, and before the feast the Feoffee maketh his Executors and dyeth, the Feoffor ought to pay the money to the heire, and not to the Executors, for the Executors in this case are no assignees in Law, and the reason of this diuersity is this, for that in the first case the Law must of necessity finde out Assignes, because there cannot be any Assignes in Deed, for the Feoffor hath but a bare condition and no estate in the Land which he can assigne ouer. But in the other case the Feoffee hath an estate in the land which he may assigne ouer, and where there may be Assignes in Deed, the Law shall neuer seeke out or appoint any Assignes in Law. And albeit the Feoffee made no assignment of the estate, yet the executors cannot be Assignees, because Assignes were only intended by the condition to be assignees of the estate, and so was it resolued * Mich. 23. & 24. Eliz by the two chiefe Justices in the Court of Wards betweene Randall and Browne which I obserued.

27. H. 8. 3. 3. & 4. Ph. & Mar. 140. a. (*) Mic. 23. & 24. Eliz. in Curia Wardorum Inter Randal & Browne. Vid. 2. Eliz. Dier 181. Pl. Com. Chapmans case 18. 288. Vid. Goodales case. lib. 5. fo. 96. 97. 17. Ass. pl. 2. Goodales case vbi supra.

But if the condition be to pay the money to the Feoffee his heires or assignes, and the Feoffee make a feoffment ouer, it is in the election of the Feoffor to pay the money to the first Feoffee or to the second feoffee, and so if the first Feoffee dyeth the Feoffor may either pay the money to the heire of the first Feoffee or to the second Feoffee, for the Law will not enforce the Feoffor to take knowledge of the second feoffment, nor of the validity thereof, whither the same be effectuall or not but at his pleasure, and the First Feoffee and his heires are expresly named in the Condition.

Sect. 340.

¶ Item sur tiel case de feoffment en Morgage, questiõ ad este demaunde en quel lieu le feoffour est tenus de tender les deniers a l'feoffee al iour assesse, &c. Et ascuns ont dit, que sur la terre illint tenus en Morgage, pur ceo que l'cõdition est dependant sur le fre; Et ont dit, q̃

ALso vpon such case of feoffment in Morgage, a question hath beene demanded in what place the feoffor is bound to tender the money to the feoffee at the day appointed, &c. And some haue said, vpon the land so holden in Morgage, because the condition is depending vpon the land. And they

¶ *Item sur tiel case de feoffment en morgage question ad este demande, &c.* Here and in other places that I may say once for all, where Littleton maketh a doubt, and setteth downe seuerall opinions and the reasons, hee euer setteth downe * the better opinion and his owne last, and so he doth here. (n) For at this day this doubt is settled, hauing beene oftentimes resolued, that seeing the money

(*) *Vid Sect. 170. 302. 375.*
(n) *8. E. 4. 4. & 14. 11. H. 4. 62. 17. Ass. p. 2. 17. E. 3. 2. 21. H. 7. Keyway 74. 16. Eliz. Dier 327. Lib. 4. f. 73. in Boroughs case. 21. E. 4. 6.*

money is a summe in grosse and collaterall to the title of the land, that the Feoffor must tender the money to the person of the Feoffee according to the latter opinion, and it is not sufficient for him to tender it vpon the land: otherwise it is of a rent that issueth out of the land. But if the condition of a Bond, or Feoffment be to deliuer twenty quarters of Wheate or twenty load of Timber or such like, the Obligor or Feoffor is not bound to carry the same about, and seeke the Feoffee, but the Obligor or Feoffor before the day must goe to the Feoffee, and know where he will appoint to receiue it, and there it must bee deliuered. And so note a diuersitie betweene money, and things ponderous, or of great weight.

8.E.4.2. 19.R.2. Dat.178.

If the condition of a Bond or feoffment be to make a feoffment, there it is sufficient (b) for him to tender it vpon the land, because the state must passe by Liuerie.

(b) 2. E.4.

¶ *Deins le roialm Dengleterre.* For if he be out of the Realme of England, hee is not bound to seeke him or to goe out of the Realme vnto him. And for that the Feoffee is the cause that the Feoffor cannot tender the money, the Feoffor shall enter into the land, as if he had duly tendered it according to the condition.

¶ *Vn especiall corporall seruice al feoffee.* This is a diuersity betweene a Rent issuing out of land, and a Corporall seruice issuing out of land, for it

si le feoffor soit sur le terre la prest a paier la mony al feoffee a le iour assesse, & le feoffee adonqz ne soit pas la, adonqz le feoffor est assouth, & excuse de paymẽt de l' mony, pur ceo que nul default est en luy. Mes il semble a ascuns que la ley est contrary, & que default est en luy. Car il est tenus ỏ qucrer le feoffee sil soit adonqz en ascun auter lieu deins le Roialme ỏ Engleterr̃. Come si home soit oblige en vn obligation de 20. li. sur condition endorce sur mesm̃ lobligat̃, que sil paya a celuy a que lobligation est fait a tiel iour 10. li. adonque lobligation de 20. li. perdra sa force, & serra tenus pur nul, en cest cas il couient a celuy que fist obligation de querer celuy a que lobligation est fait, sil soit deins Engleterre, & al iour assesse de tender a luy les dits 10. li. autrement il forfeitera la summe de 20. li comprise deins l' obligation &c. Et issint il semble en lauter cas, &c. Et coment q̃ ascuns ont dit, que le condition est dependant sur la terre, vncore ceo ne proue q̃ le

haue said that if the feoffor be vpon the land there ready to pay the money to the feoffee at the day set, & the feoffee bee not then there, then the feoffor is quit and excused of the payment of the money, for that no default is in him. But it seemeth to some that the law is contrary, and that default is in him, for he is bound to seeke the feoffee if hee bee then in any other place within the Realm of England. As if a man be bound in an obligation of 20. pound vpon condition endorced vpon the same obligation, that if hee pay to him to whom the obligation is made at such a day 10. pound, then the obligation of 20. pound shall lose his force and bee holden for nothing. In this case it behooueth him that made the obligation to seek him to whom the obligation is made if he be in England, and at the day set to tender vnto him the said 10. poũd otherwise hee shall forfeit the summe of 20. pound comprised within the obligation, &c. And so it seemeth in the other case, &c. And albeit that some haue

le feasans de le condition destre performe, couient estre fait sur la terr, &c. nient plus que si le condition fuit que le feoffor ferra a tiel iour, &c. vn especial corporall seruice al feoffee, nient nosmant le lieu ou tiel corporal seruice serra fait, & tiel cas le feoffor doit faire tiel corporal seruice al iour limitte al feoffee, en quecunq; lieu Dengleterre que le feoffee est, sil voile auer aduãtage, de le condition, &c. Issint il semble en lauter cas. Et il semble a eux que il serroit pluis properment dit que lestate de la terre est dependant, sur la condition, que adire, que le condition est dependant sur la terre, &c. Sed quære, &c.

said that the condition is depending vpon the land, yet this proues not that the making of the condition to be performed, ought to bee made vpon the land, &c. no more then if the condition were that the feoffor at such a day shal do some especiall corporal seruice to the feoffee not naming the place where such corporall seruice shall be done. In this case the feoffor ought to doe such corporall seruice at the day limitted to the feoffee in what place soeuer of England that the feoffee be, if hee will haue aduantage of the condition, &c. so it seemeth in the other case. And it seemes to them that it shall bee more properly said, that the estate of the land is depending vpon the condition, then to say that the condition is depending vpon the land, &c. *Sed quare, &c.*

sufficeth (as hath beene said) that the rent bee tendered vpon the land, out of which it issueth. But Homage or any other speciall Corporall seruice must be done to the person of the Lord, and the Tenant ought by the law of conuenience to seeke him to whom the seruice is to bee done in any place within England.

21.E.3.10. 20.H.6.31. 27.E.3.34. 21.Ass.13. 7.E.4.4. 21.E.4.17. 20.E. Auowr. 113. 45.E.3.9. 46.E.3. Barre 216.

If a man be bound to pay twenty pound at any time during his life at a place certaine, the Obligor cannot tender the money at the place when hee will, for then the Obligee should be bound to perpetuall attendance, and therefore the Obligor in respect of the incertainty of the time must giue the obligee notice that on such a day at the place limitted, hee will pay the money, and then the obligee must attend there to receiue it: for if the obligor then and there tender the money, he shall saue the penaltie of the Bond for euer.

Mich 22. & 23.Eliz. in Banke le Roy which I my selfe heard and obserued. 19.Eliz. Dyer 354. Lib.8 fol.92. in Frances case.

The same law it is if a man make a feoffment in fee vpon condition, if the Feoffor at any time during his life pay to the Feoffee twenty poũd at such a place certaine that then, &c. In this case the Feoffor must

23.Eliz. Dyer 354

giue notice to the Feoffee when he will pay it, for without such notice as is aforesaid the tender will not be sufficient. But in both these cases if at any time the Obligor or Feoffor meete the Obligee or Feoffee at the place he may tender the money.

If A. be bound to B. with condition, that C. shall enfeoffe D. on such a day. C must giue notice to D. thereof, and request him to be on the land at the day to receiue the feoffment and in that case he is bound to seeke D. and to giue him notice.

2.E.4.3.& 4.

¶ *De tender.* or Tendre is a word common both to the English and French, in Latyn Offerre, and in that sence, and with that Latyn word it is alwayes vsed in the Common Law. Vide Sect.514. the tender of the halfe Marke. And before Sect. 333.334.337.

Sect. 341.

¶ HEre the diuersitie appeareth betweene a summe in grosse, and a rent issuing out of the land, as hath been touched before.

¶ *Vncore il poet eslier*, S. *de relinquisher son entry ou de auer vn Assise.*

Here it appeareth, That if the condition be broken for non payment of the rent, yet if the Feoffor bringeth an Assise for the rent due at that time, he shal neuer enter for the condition broken, because he affirmeth the rent to haue a continuance, and thereby wayueth the condition. And so it is if the rent had had a clause of Distresse annexed vnto it, if the Feoffor had distreyned for the rent, for non payment whereof the condition was broken, he should neuer enter for the condition broken, but he may receiue that rent and acquite the same, and yet enter for the condition broken. But if he accept a rent due at a day after, hee shall not enter for the condition broken, because he thereby affirmeth the lease to haue a continuance.

14.E.3. Entre congeable 45. 14. Ass. 21. 45. Ass. 5. 6.H.7.3. 17.E.3.73. Pl.Com. 133. 22.H.6.57.

¶ Mes si feoffment ẽ fee soit fait reseruant al feoffor vn annuall rent, et pur ðfault de payment vn re-entrie, &c. en cest case il ne besoigne le tenant a tẽder le rent, quaunt il est arere, forsque sur le tre pur ceo que ceo est Rent issuant hors de la Terre, que est Rent secke. Car si le Feoffor soit seisie vn foits ð cest rent, et puis il vient sur la terre, &c. et le rent luy soit denie, il poet auer Assise de Nouel Disseisin, Car coment que il poet entr̃ p cause de le condition enfreint, &c. vncore il poet eslier, ⁊, de relinquisher son entrie, ou de auer vn Assise, &c. Et isslint est diuersitie quant al tender de le Rent que est issuant hors de la Terre, et del tender dauter summ̃ en grosse que ne passe issuant Hors dascun Terre.

BVt if a feoffement in fee bee made, reseruing to the feoffor a yerely rent, and for default of payment a re-entrie, &c. in this case the Tenaunt needeth not to tender the rent when it is behind, but vpon the land, because this is a Rent issuing out of the Land, which is a Rent Secke. For if the Feoffor bee seised once of this Rent and after hee commeth vpon the Land, &c. and the rent is denied him, he may haue an Assise of *Nouel Disseisin*: for albeit he may enter by reason of the Condition broken, &c. yet hee may choose either to relinquish his entrie, or to haue an Assise, &c. And so there is a diuersitie as to the tender of a Rent which is issuing out of the land, and of the Tender of another Summe in Grosse, which is not issuing out of any Land.

Section 342.

¶ ET pur ceo il serra bone et sure chose pur celuy que boet faire tiel feoffement en mortgage, de mitter vn especial lieu lou les deniers ꝑ̄ot payes, et le pluis especiall que est mis, le

AND therefore it wil be a good and sure thing for him that wil make such feoffement in morgage, to appoint an especial place where the money shall be payd, and the more speciall that it bee put, the

le meliox eſt pur le feoffor. Si come A. infeoffe B. a auer a luy et a ſes heires, ſur tiel condition, Que ſi A. paya a B. en le Feaſt de Saint Michael Larchangell procheine a bener en Eſglíſe cathedrall de Paules en Londres deins quater heures procheine deuant le heure d noone d meſm le feaſt a le Rood loft de le Rood de le North dooze deins meſme le Eſglíſe, ou al tombe d S. Erkenwald, ou al huis de tiel Chappell, ou a tiel piller, deins meſme Leſglíſe que adonque bien liſt al auantdit A. et a ſes heyres dentrer, &c. en tiel caſe il ne beſoigne de querer le feoffee en auter lieu, ne deſtre en auter lieu, forſque en le lieu compríſe en lendenture, ne deſtre la pluis longe temps, q̃ le temps ſpecifie en meſm̃ lendenture, pur tender ou payer le money a le Feoffee, &c.

better it is for the Feoffor. As if A. infeoffe B. to haue to him and to his heires, vpon ſuch condition, That if A. pay to B. on the Feaſt of Saint *Michael* the Arch-Angel next comming, in the Cathedrall Church of Saint *Pauls* in London, within foure houres next before the houre of Noone of the ſame feaſt, at the Rood loft of the Rood of the North doore, within the ſame Church, or at the Tombe of Saint *Erkenwald*, or at the doore of ſuch a Chappell, or at ſuch a pillar within the ſame Church, that then it ſhall be lawfull to the aforeſayd A. and his heires to enter, &c. In this caſe he needeth not to ſeek the Feoffee in an other place, nor to bee in any other place, but in the place compriſed in the Indenture, nor to bee there longer than the time ſpecified in the ſame Indenture, to tender or pay the mony to the feoffee, &c.

¶ HEre is good councell and aduice giuen, to ſet downe in Conueyances euerie thing in certaintie and particularitie, for Certaintie is the mother of Quietneſſe and Repoſe, and Incertaintie the cauſe of variance and contentions: and for obtaining of the one, and auoyding of the other, the beſt meane is in all aſſurances, to take councell of learned and well experienced men, and not to truſt onely without aduice to a Preſident. For as the rule is concerning the ſtate of a mans bodie, Nullum medicamentum eſt idem omnibus, ſo in the ſtate and aſſurance of a mans Lands, Nullum exemplum eſt idem omnibus.

¶ *Al Tombe de Saint Erkenwald, &c.* This Erkenwald was a younger ſonne of Anna King of the Eaſt Saxons, and was firſt Abbot of Cherſey in Surrey, which he had founded, and after Biſhop of London, a holy and deuout man, and lieth buried in the South Ile, aboue the Quire in Saint Pauls Church, where the Tombe yet remaineth that Lit. ſpeaketh of in this place, hee flouriſhed about the yeare of our Lord, 680.

The reſidue of this Section, and the (&c.) are euident.

Sect.343.

¶ ITem en tiel caſe lou le lieu de payment eſt limitte, le Feoffee neſt oblige de receiuer le payment en nul auter lieu forſque en meſme le lieu iſſint

ALſo in ſuch caſe where the place of payment is limitted, the Feoffee is not bound to receiue the payment in any other place but in the ſame place ſo limitted.

¶ HEreby it appeareth that the place is but a Circumſtance. And therefore if the Obligee receiueth it at any other place, it is ſufficient, though he be not bound to receiue it at any other place.

And

And so it is if the money be to be paid on such a Feast, yet if the money be tendred and received at any time before the day, it is sufficient.

limit. Mes uncore si il resceiust le payment en auter lieu, ceo est assets bone, et auxy fort pur le feoffor, sicome le receit ust este en mesme le lieu issint limit, &c.

But yet if hee do receiue the payment in another place, this is good enough and as strong for the feoffor as if the receipt had been in the same place so limitted, &c.

Sect. 344.

THerepon are many diuersities worthie of obseruation.

First, there is a diuersitie, when the condition is for payment of money, and when for the deliuerie of a Horse, a Robe, a Ring, or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horse, &c. in satisfaction, this is good; but if the condition were for the deliuerie of a horse, or robe, there albeit the obligee or feoffee accept money or any other thing for the Horse, &c. it is no performance of the condition. The like Law is, if the condition bee to acknowledge a Recognisance of twentie pounds, &c. if the Obligee or feoffee accept twenty pounds in satisfacton of the condition, it is not sufficient in Law, * but notwithstanding such acceptance, the condition is broken. And so it is of all other colaterall conditions, though the Obligee or feoffee himselfe accept it.

3.H.7.4.b.9.H.7.16. 21.H.7.20.21 19.E.4.1.b. 47.E.3.24. 22.E.4.24. 37. H.6.26. La.9.fo.78. Peytoes case.

12.H.4.23

* Peytoes case vbi supra.

CItem en tiel case de feoffmẽt en morgage, si le feoffor paya al feoffee vn chiual, ou hanap dargent, ou vn annuel dor, ou auter tiel chose en plein satisfaction del money, & lauter ceo receiust, cẽ assets bon & auxy fort sicome il ust receiue la summe del money, coment qne le chiual, ou laut chose ne fuit de vintisme part del value de sum de le money, pur ceo que lauter auoit ceo accept en pleine satisfaction.

ALso in the case of Feoffement in Morgage, if the Feoffor payeth to the Feoffee a Horse or a Cup of Siluer, or a Ring of Gold, or any such other thing in full satisfaction of the money, and the other receiueth it, this is good enough, and as strong as if hee had receiued the summe of money, though the horse or the other thing were not of the twẽtith part of the value of the sum of mony, because that the other hath accepted it in ful satisfaction

4.H.7.4. Dy.35.H.8.56. 27.H.8.1.

Secondly, in case when the condition is for payment of money, there is a diuersitie when the money is to be payd to the partie, and when to an estranger: for when it is to bee payd to an estranger, there if the stranger accept a horse or any colaterall thing in satisfaction of the money, it is no performance of the Condition, because the Condition in that case is strictly to be performed. But if the condition be, That a stranger shall pay to the Obligee or Feoffee a sum of money, there the Obligee or Feoffee may receiue a horse, &c. in satisfaction.

Lib.5.fo.17. Pinnels case.

Thirdly, where the condition is for payment of twentie pounds, the Obligor or feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole, because it is apparant that a lesser summe of money cannot be a satisfaction of a greater. But if the Obligee or Feoffee doe at the day receiue part, and thereof make an acquittance vnder his Seale in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an acquittance of the whole. If the Obligor or Lessor pay a lesser summe either before the day, or at another place than is limitted by the Condition, and the Obligee or Feoffee receiueth it, this is a good satisfaction.

26.H.6.tit.Barre 37.

30.E.3.23

Fourthly, Not onely things in possession man be giuen in satisfaction, (whereof Littleton putteth his case, but also if the Obligee or Feoffee accept a Statute or a Bond in satisfaction of the money it is a good satisfaction.

11.R.2.tit.Barre 343.

If the Obligor or Feoffor be bound by condition to pay an hundred Markes at a certaine day

day, and at the day the parties doe account together, and for that the Feoffee or Obligee did owe twentie pound to the Obligor or Feoffor, that summe is allowed, and the residue of the hundred Markes paid, this is a good satisfaction, and yet the twentie pound was a Thole in action, and no payment was made thereof, but by way of retayner or discharge

37.H.6.26.46.E.3.33. 34.H.6.17. 12.H.8.1.b

¶ *En pleine satisfaction.* Nota, In satisfacion, and in full satisfaction is all one.

Sect. 345.

ITem si homme enfeoffa vn auter sur condition, que il et ses heires rendront a vn estrange home a ses heires vn annuel rent de 20. s. &c. et si il ou ses heires faylont de payment de ceo, que adonques bien lirroit al feoffor et a ses heires de entrer, ceo est bon condition, et vncore en cest cas, coment que tiel annuall payment est appelle en lendenture vn annuall rent, ceo nest pas properment rent. Car si serroit rent, il couient estre Rent service, ou rent charge, ou rent secke, et il nest ascun de eux. Car si lestrange fuit seisie ó ceo, et puis il fuit a luy denie, il nauera vnque Assise de ceo, pur ceo que il nest pas issuant hors dascun tenements, et issint lestrange nad ascun remedie si tiel annual rent soit aderere en cest cas, mes que le feoffor ou ses heires poient enter, &c. Et vncore si le feoffor ou ses

ALso if a man infeoffe an other vpon Condition, that hee and his heires shall render to a stranger and to his heires a yearely rent of 20. shillings, &c. and if hee or his heires fayle of payment thereof, that then it shall bee lawfull to the Feoffor and his heires to enter, this is a good Condition, and yet in this case, albeit such annuall payment be called in the Indentnre a yearely rent, this is not properly a rent. For if it should be a rent, it must bee Rent Seruice, Rent Charge, or a Rent Secke, and it is not any of these. For if the stranger were seised of this and after it were denied him, hee shall neuer haue an Assise of this, because that it is not issuing out of any Tenements, and so the stranger hath not any remedie if such yearely rent be behind in this case, but that the Feoffor or his heires may enter, &c. And yet if the Feoffor or his heires enter for default of pay-

¶ R *Endront a vn estrãge home vn annuel rent, &c.*

This reseruation is meerely void (a) for the reasons hereafter in this Section alleadged by Littleton, and also for that no Estate moueth from the strãger, and that he is not partie to the Deed.

(a) *Lib.8.fol.70.71.*

And albeit it bee a voyde reseruation, and can be no rent, and the words of the Condition be that if the feoffee or his heires faile of payment of it (that is, of the annual rent) that then, &c. yet it appeareth that the Condition is good, and annuall Rent shall bee taken for an annuall summe of money in grosse, and not in the proper signification thereof, viz. to bee a Rent issuing out of Land, which is to bee obserued, that words in a Condition shall bee taken out of their proper sence, Vt res magis valeat quam pereat, and so in like cases it is holden (b) in our Bookes.

(b) *6.E.2.entr.cong.55. recupre. 8.Ass.34. mourton.*

But if A. bee seised of certaine lands, and A. and B. toyne in a Feoffment in fee reseruing a rent to them both and their heires, and the Feoffee grant that it shall be lawfull for them and their heires to distreine for the

the rent, this is a good grant of a rent to them both, because hee is partie to the Deed, and the clause of distresse is a grant of the rent to A. and B. as it appeareth before in the Chapter of rents. But if B. had beene a stranger to the Deed, then B. had taken nothing. And vpon this diuersitie are all the Bookes (c) with prima facie seeme to vary, reconciled.

(c) 18.E.2.Ass.381. 26.H.8.2. 13.E.2.feoffments & fauts 108. 31.Ass.p.31.

¶ *Car sil serra rent, il couient estre rent seruice, rent charge ou rent secke, & il nest nul de eux.* This is a good Logicall argument à diuisione, & argumentum à diuisione est fortissimum in lege. Littleton vseth this argument else where, where see more of this matter.

heires entront pur default ď payment, adonque tiel rent est ale a touts iours. Et issint tiel rent nest forsqz vn peine assesse a le tenant et ses heires, que sils ne voilent payer ceo solonque la forme ďl Indenture, ils perdront lour terre per lentrie del feoffor ou ses heires pur default ď payment. Et en cest cas il semble que le feoffee et ses heires doient querer le estranger et heires sils sont deins Engleterre, pur ceo que nul lieu est limit lou le payment serra fait, & pur ceo que tiel rent nest pas issuant hors dascun terre, &c.

ment: then such rent is taken away for euer. And so such a rent is but as a paine set vpon the tenant and his heires, that if they will not pay this according to the forme of the Indenture, they shall lose their land by the entrie of the Feoffor or his heires for default of payment. And in this case it seemeth that the Feoffee and his heires ought to seeke the stranger and his heires if they bee within *England*, because there is no place limited where the payment shall bee made, and for that such rent is not issuing out of any land, &c.

(d) Vide Sect.381.

¶ *Pur default de payment.* Note here seeing it is but a summein grosse, there need no demand of the rent, for Littleton here sayth, that the Feoffee ought to seeke the person of the stranger to pay him the summe of money, because it is a summe in grosse, and not issuing out of the Land.

Section 346.

¶ *Le feoffor donor, &c. ou a lour heires.* Hereby it may seeme that if a man make a Feoffment, Gift, or Lease, that (omitting himselfe) hee may reserue a Rent to his heires. But Littleton is not so to bee vnderstood, his meaning is, that eyther the Feoffor, &c. may reserue the Rent to himselfe only, or to himselfe and his heires. And yet it is holden (e) in our bookes that a man may make a Feoffment in fee reseruing a Rent of forty shillings to the Feoffor for tearme of his life, and

(e) 5.E.3.27.28.

¶ Et hic nota **deux choses, Un est, que nul rent (qz properment est dit rent) pott estre reserue sur ascun feoffment, done, ou leas, forsque tantsolement al feoffor, ou al donor, ou al lessor, ou a lour heires, & en nul maner il pott estre reserue a ascun estrang**

And here note two things, one is, That no rent (which is properly said a Rent) may be reserued vpon any feoffment, gift, or lease, but only to the Feoffor, or to the Donor, or to the Lessor, or to their heires, and in no manner it may bee reserued to any strange person. But if

person

perſon. Mes ſi deux ioyntenants font vn leas per fait indent, reſeruant a vn de eux vn certaine annuall rent, ceo eſt aſſets bon a luy a que l'rent eſt reſerue, pur ceo q̄ il eſt priuie a le leaſe e nemy eſtrange a le leas, &c.

two Ioyntenants make a Leaſe by Deed indented reſeruing to one of them a certaine yearely Rent, this is good enough to him to whom the Rent is reſerued, for that hee is priuie to the Leaſe, & not a ſtranger to the Leaſe, &c.

after his deceaſe a pound of Comyne to his heires, that this is good.

If a man make a Feoffement in fee reſeruing a Rent to him or his heires it is good (f) to him for tearme of his life, and void to his heire.

(f) *Lib. 5. fol. 111. Malloies caſe.*

¶ *Mes ſi 2. ioyntenants font vn leaſe per fait indent, &c.*

This caſe being by Deed indented, is euident, and it hath beene touched before, but

5. E. 4. 4. a 27. H. 8. 16. Vide Sect. 58.

if that two Ioyntenants without a Deed indented make a Leaſe for life reſeruing a Rent to one of them, it ſhall enure to them both in reſpect of the ioynt reuerſion. And ſo it is of a ſurrender to one of them, it ſhall enure to them both.

If two Ioyntenants, the one for life, and the other in fee, ioyne in a Leaſe for life, or a gift in tayle reſeruing a Rent, the Rent ſhall enure to them both, for if the particular eſtate determine, they ſhall be ioyntenants againe in poſſeſſion. But if tenant for life & he in the reuerſion ioyne in a Leaſe for life or a gift in tayle by Deed reſeruing a Rent, this ſhall enure to the Tenant for life only, during his life, and after to him in the reuerſion, for euery one grant that which he may lawfully grant, and if at the Common Law they had made a Feoffment in fee

Vide Sect. 58.

generally, the Feoffee ſhould haue holden of the Tenant for life during his life, and after of him in reuerſion, and ſo it was holden (g) in the Kings Bench.

(g) *Mich. 36. & 37. Eliz.*

Section 347.

¶ LE ſecond choſe eſt que nul entrie, ou reentrie (que eſt tout vn) poit eſtre reſerue, ne done a aſcun perſon forſque tantſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires, & tiel reentre ne poit eſtre grant, a vn auter perſon. Car ſi home leſſa terre a vn auter pur terme de vie per Indenture, rendant al leſſor & a ſes heires certaine rent, & pur defaut de payment vn reentry, &c. ſi apres le leſſor per vn fait grant a le reuerſion de la terre a vn auter en fee et le tenant at terme de vie attorna, &c. ſi le rent a-

THe ſecond thing is, that no entrie nor reentrie (which is all one) may bee reſerued or giuen to any perſon but only to the Feoffor or to the Donor, or to the Leſſor, or to their heires. And ſuch reentrie cannot bee giuen to any other perſon. For if a man letteth land to another for tearme of life by Indenture rendring to the Leſſor and to his heires a certaine rent, and for default of payment, a reentrie, &c. If afterward the Leſſor by a Deed granteth the reuerſion of the Land to another in fee, and the Tenant for terme of life, attorne, &c. if the rent bee

¶ *Que nul entrie &c.* Here Littleton reciteth one of the maximes of the Common law, & the reaſon hereof is, for auoyding of maintenance, ſuppreſſion of right, and ſtirring vp of ſuites: and therefore nothing in action, entrie, or reentrie can be granted ouer; for ſo vnder colour thereof, pretended titles might bee granted to great mē, whereby right might bee trodden downe, & the weake oppreſſed, which the Common Law forbiddeth, as men to grant before they be in poſſeſſion.

¶ *Put default*

faults de payment vn re-entrie, &c. Hereupon is to bee collected diuers diuersities, first betweene a condition that requireth a re-entrie, and a limitation that Ipso facto determineth the estate without any entrie. Of this first sort no stranger as Littleton saith, shall take any aduantage, as hath beene said. But of limitations it is otherwise. As if a man make a Lease Quousque that is vntil I.S. come from Rome, the Lessor grant the reuersion ouer to a stranger. I.S. comes from Rome, the Grantee shall take aduantage of it and enter, because the estate by the expresse limitation was determined.

Regist. 248. Pl. Com. 27. 34. E.3. Formedon 68. F.N.B. 201. Lib. 10 fo. 36. Maria Portingtons case.

So it is if a man make a Lease to a woman Quamdiu casta vixerit, or if a man make a Lease for life to a widow, Si tam diu in pura viduitate viuerit. So it is if a man make a Lease for a 100. years if the Lessee liue so long, the Lessor grants ouer the reuersion, the Lessee dies, the Grantes may enter, Causa qua supra.

2. Another diuersitie is betweene a condition annexed to a freehold, and a condition annexed to a Lease for yeares.

pres soit adeuere, le grantee de le reuersion poit distreiner pur le rent, pur ceo que le rent est incident a le reuersion, mes il ne poit entrer en la tre, & ouste le tenant, si come l'lessor puisloit, ou ses heyres, si le reuersion vst este continue en eux, &c. Et en cest case lentrie est tolle a touts temps. Car le grantee de le reuersion ne poit entrer, Causa qua supra. **Et le lessor, ne ses heyres ne poyent enter. Car si le lessor puisloit ent, donqes il couient que il serroit en son primer estate, &c. & ceo ne poit estre, pur ceo que il ad alien de luy le reuersion.**

after behinde, the grantee of a reuersion may distreinke for the rent, because that the rent is incident to the reuersion, but hee may not enter into the land and oust the tenant, as the lessor might haue done or his heires, if the reuersion had beene continued in them, &c. And in this case the entrie is taken away for euer, For the grantee of the reuersion cannot enter. *Causa qua supra.* And the lessor nor his heires cānot enter, for if the lessor might enter, then hee ought to be in his former estate, &c. And this may not bee, because hee hath aliened from him the reuersion.

For if a man make a gift in taile or a Lease for life vpon condition, that if the Donee or Lessee goeth not to Rome before such a day, the Lease shall cease or be voide, the Grantee of the reuersion shall neuer take aduantage of this condition, because the estate cannot cease before an entrie, but if the Lease had beene but for yeares, there the Grantee should haue taken aduantage of the like condition, because the Lease for yeares Ipso facto by the breach of the condition without any entrie was voyde, for a Lease for yeares may begin without ceremony, and so may end without ceremony: but an estate of freehold cannot begin nor end without ceremonie. And of a voide thing an estranger may take benefit, but not of a voydable thing by entrie.

Brooke tit. Condition in Abb. 11. H.7. Lopp in de Bromley 10 E.52. 10. Ass pl.24. Pl. Com.136. 11.H.7.17. 19.R.2. Done 10.

¶ *Al feoffor, ou al donor, &c. ou a lour heires, &c.* Here is to be obserued a diuersity betweene a reseruation of a rent and a re-entry, for (as it hath beene said) a rent cannot be reserued to the heire of the Feoffor, but the heire may take aduantage of a condition, which the Feoffor could neuer doe. As if I infeoffe another of an acre of ground vpon condition that if mine heire pay to the Feoffee, &c. 20. shillings, that he and his heires shall re-enter, this condition is good, and if after my decease my heire pay the 20. shillings, he shall re-enter for he is prime in blood, and enioy the land as heire to me.

Pl. Com. 313. 314. in Scolastices case.

15. E.4.14.a.

¶ *Forsque tant solement al feoffor, &c. ou a lour heires.* Our Author speaketh here of naturall persons for an example, for if a Bishop, Archdeacon, Parson, Prebend, or any other body politique or Corporate, Ecclesiasticall or Temporall make a Lease &c. vpon condition, his successor may enter for the Condition broken, for they are prime in right.

21. H.7.18.a.

And so if a man haue a Lease for yeares, and demise or grant the same vpon condition, &c. and die, his Executors or Administrators shall enter for the condition broken, for they are prime in right, and represent the person of the dead.

(y) If Cesty que vse had made a lease for yeares, &c. vpon Condition, the Feoffees should not enter for the Condition broken, for they are priuie in estate, but, not priuie in blood. (y) 27.H.8.1.

Another diuersitie is in case of a Lease for yeares, where the condition is that the Lease shall cease or be voide as is aforesaid, and where the condition is, that the Lessor shall re-enter, for there the Grantee as Littleton saith, shall neuer take benefit of the condition.

And it is to be obserued that where the estate or Lease is Ipso facto voide by the condition or limitation, no acceptance of the rent after can make it to haue a continuance; Otherwise it is of an estate or Lease voidable by entrie. Pl.Com. Browning's case.136.

Another diuersitie is betweene conditions in Deed whereof sufficient hath beene said before, and conditions in Law. As if a man make a Lease for life, there is a condition in Law annexed vnto it, that if the Lessee doth make a greater estate, &c. that then the Lessor may enter. Of this and the like conditions in Law which doe giue an entrie to the Lessor, the Lessor himselfe and his heires shall not only take benefit of it, but also his Assignee and the Lord by Escheate euery one for the condition in Law broken in their owne time. Another diuersitie there is betweene the iudgement of the Common Law whereof Littleton wrote, and the Law at this day by force of the statute (*) of 32.H.8.cap.34. (a) For by the Common Law no Grantee or Assignee of the reuersion could (as hath beene said) take aduantage of a re-entrie by force of any Condition. For at the Common Law, if a man had made a Lease for life reseruing a rent, &c. and if the rent be behinde a Re-entrie, and the Lessor grant the reuersion ouer, the Grantee should take no benefit of the condition for the cause before rehearsed. But now by the said Statute of 32.H.8. the Grantee may take aduantage thereof, and vpon demand of the rent and non-payment he may re-enter. By which act it is prouided, that aswell euery person which shall haue any grant of the King of any reuersion, &c. of any lands, &c. which pertained to Monasteries, &c. as also all other persons being Grantees or Assignees, &c. to or by any other person or persons, and their Heires, Executors, Successors and Assignes shall haue like aduantage against the Lessees, &c. by entrie for non-payment of the rent, or for doing of waste or other forfeiture, &c. as the said Lessors or Grantors themselues ought or might haue had. Vpon this Act diuers resolutions and iudgements haue beene giuen which are necessary to be knowne. (*) 32.H.8. cap.34. vide preamble (a) 26.H.6.tit.entr. cong.49

1. That the said Statute is generall, viz. (b) that the Grantee of the reuersion of euery common person aswell as of the King shall take aduantage of conditions. (b) Pl.Com.Hill & Grange's case, 175.176. M.10. & 11.Eliz.180. Dier.Ibid.

2. That the Statute doth extend to Grants made by the Successors of the King albeit the King be only named in the act.

3. That where the Statute speaketh of Lessees that the same doth not extend to gifts in tayle. 14.Eli.Dier 309. Winters case.

4. That where the Statute speakes of Grantees and Assignes of the reuersion, (d) that an Assignee of part of the state of the reuersion may take aduantage of the Condition. As if Lessee for life be, &c. and the reuersion is granted for life, &c. So if Lessee for yeares, &c. be, and the reuersion is granted for yeares, the Grantee for yeares shall take benefit of the Condition in respect of this word (Executors) in the Act. (d) Pl.Com.Kidwelly's case 69. Vid.Dier Mich.14.& 15. Eliz.309. Vid.7.E.3.54. Simile adiud. ed in Communi banco in the Lord Dyers time, F.17.Eliz. Mich.14.& 15 Eliz. Dier 309. adiudge Winters case.

5. That a Grantee of part of the reuersion, shall not (e) take aduantage of the Condition, as if the Lease be of three acres reseruing a rent vpon condition, and the reuersion is granted of two acres, the rent shall be apportioned by the act of the parties, but the condition is destroyed, for that it is entire and against common right. (e) Lib.5.fo.54. Knights case. Winters case, vbi supra. Knights case vbi supra.

6. That in the Kings case the condition in that case is not destroyed but remaines still in the King. Lib.4.fo.120. Dumpers case.

7. By act in Law a condition may bee apportioned in the case of a common person, as if a Lease for yeares be made of two acres, one of the nature of Burrough English, the other at the Common Law, and the Lessor hauing issue two sonnes, dieth, each of them shall enter for the condition broken, and likewise a condition shall be apportioned by the act and wrong of the Lessee, as hath beene sayd in the Chapter of Rents.

8. If a Lease for life bee made, reseruing a rent vpon condition, &c. the Lessor leuies a fine of the reuersion, he is Grantee or Assignee of the reuersion, but without attornement he shall not take aduantage of the Condition, for the makers of the makers of the Statute intended to haue all necessarie incidents obserued, otherwise it might be mischieuous to the lessee. Resolued in Dukes case Pasch. 20.Eliz.in Communi Banco. Malleries case, lib.5. fo.112.b.

9. There is a diuersitie betweene a Condition that is compulsarie, and a Power of Reuocation that is voluntarie: for a man that hath a power of reuocation, may by his owne act extinguish his power of Reuocation in part, as by leuying of a fine of part, and yet the power shall remaine for the residue, because it is in nature of a limitation, and not of a Condition, and so it as resolued (b) in the Earle of Shrewsburies case in the Court of wards, Pasch.39.Eliz. and Mich 40.& 41.Eliz. (b) 14.Eliz.Dyer 39.

10. If the Lessor bargaine and sell the reuersion by Deed indented and inrolled, the Bargaines is not in the Per by the Bargainor, and yet he is an Assignes within the Statute.

So if the Lessor grant the reuersion in fee to the vse of A. and his heires, A. is a sufficient Assignee within the Statute, because he comes in by the act and limitation of the partie, albeit he is in the Post, and the words of the Statute be, To or By, and they bee Assignees to him, although they be not by him: but such as come in meerely by act in Law, as the Lord of the Mesleine, the Lord by Escheat, the Lord that entreth or claimeth for Mortmaine, or the like, shall not take benefit of this Statute.

Lib 5 fo. 113. Mallories case. Lib 8 fol. 92. Prowses case.

11 If the Lessor in the case before bargaine and sel the reuersion by Deed indented and inrolled, or if the Lessor make a feoffement in fee, and the Lessee re-enter, the Graunte or Feoffee shall not take any aduantage of any Condition, without making notice to the Lessee.

And so was it resolued in Wyntors case. Mich. 14. & 15 Eliz. in Communi Banco and ofttimes since. V. Dyer 309.

12 Albeit the whole words of the Statute be, for non-payment of the Rent, or for doing of waste or other forfeiture, yet the Grantees or Assignees shall not take benefit of euerie forfeiture, by force of a condition, but onely of such conditions as either are incident to the reuersion, as Rent, or for the benefit of the state, as for not doing of waste, for keeping the houses in reparations, for making of Fences, scouring of Ditches, for preseruing of woods, or such like, and not for the payment of any summe in Grosse, deliuerie of Corne, wood, or the like, so as other forfeiture shall be taken for other forfeitures like to those examples which were there put, (videlicet) of payment of Rent, and not doing of waste, which are for the benefit of the Reuersion.

Section 348.

¶ *AL Seignieur per voy de Escheat, &c.*

Note here it appeareth, That the Lord by Escheat shall distreyne for the Rent, and yet the Rent was reserued to the Lessor and his heires, but both Assignees in Deed and Assignees in Law shall haue the rent, because the Rent being reserued of Inheritance to him and his heires, is incident to the reuersion, and goeth with the same. But if the Rent were reserued to him and his Assignes, and the Lessor assigned ouer the reuersion, and dieth, the Assignes shall not haue the Rent after his decease, because the Rent determined by his death, for that it was not reserued to him, his heires, and Assignes.

19. E. 3. Nelson 14.

¶ *Mes il ne poet enter en la terre per force del Condition, &c.*

Hereby it appeareth, That at the Common Law neither Assignes in deed, nor Assignes in Law could haue taken the benefit of either entrie or reentrie, by force of a condition.

(f) *21. H. 7. 18. 17. Ass. 30. 19. E. 3. Gard 113. 114. 18. Ass. pl. 18. Lib. 7. fol 7. The Earle of Bedfords case.*

¶ *Pur ceo que il nest pas heire al Lessor, &c.*

The Gardein in Chiualrie or in Socage shal in the right of the heire take benefit of a Condition by entrie or re-entrie, by the Common Law, and so it is here implied.

¶ Item si soyt Seignior et tenant, & l' tenant fait vn tiel lease pur terme de vie, rendant a Lessor et a ses hẽs tiel annual rẽt, & pur default de payment vn re-entrie, &c. si apres l' Lessor mozust sans heire durant la vie le Tenaunt a terme de vie, per que le reuersion deuient al Seignior per voy descheate, et puis le rent de le Tenaunt a terme de vie soit aderere, l' Seignior poet distreyner l' Tenant pur le Rent arere: Mes il ne poet enter en la terre per force del condition, &c. pur ceo que il nest pas heire al Lessor, &c.

ALso if Lord and Tenant be, and the Tenant make a Lease for terme of life, rendring to the Lessor and his Heyres such an annuall Rent, and for default of payment, a re-entrie, &c. if after the Lessor dieth without heire during the life of the Tenant for life, whereby the Reuersion commeth to the Lord by way of Escheat, and after the rent of the tenant for life is behind, the Lord may distreyn the Tenant for the rent behind, but he may not enter into the Land by force of the condition &c. because that he is not heire to the Lessor, &c.

Section 349.

¶ Item ſi terre ſoit graunt a vn home pur terme de deux ans ſur tiel condition, que il payeroit al grantor deins les dits deux ans 40. Markes adonques il aueroit la terre a luy et a ſes heyres, &c. en ceſt caſe ſi le Grantee enter per force de le Grant ſans aſcun liuerie de ſeiſin fait a luy per le Grantor, et puis il paya al Grauntor les 40. Markes deins les deux ans, vncore il nad riens en la terre forſque pur terme de deux ans, pur ceo que nul liuerie de Seiſin a luy fuit fait al commencement. Car ſi aueroit Franktenement et fee en ceſt caſe, pur ceo que il ad performe le condition, donque il aueroit franktenement per force del prime graunt, lou nul liuerie de Seiſin de ceo fuit fait, que ſeroit inconuenient, &c. Mes ſi le Grantor vſt fait liuerie de ſeiſin al Grantee per force de la Grant, donque aueroit le Grantee le franktenement et l'fee ſur meſme le condition.

ALſo if land bee graunted to a man for terme of two yeares, vpon ſuch condition, That if hee ſhall pay to the Grauntor within the ſayd two yeares fortie Marks, then he ſhall haue the Land to him and to his Heyres, &c. In this caſe if the Grantee enter by force of the Grant, without any Liuerie of Seiſin made vnto him by the Grauntor, and after he payeth the Grauntor the fortie Markes within the two yeares, yet he hath nothing in the land but for terme of two yeares, becauſe no liuerie of Seiſin was made vnto him at the beginning: for if he ſhould haue a freehold and fee in this caſe, becauſe he hath performed the condition, then he ſhould haue a freehold by force of the firſt Grant, where no liuerie of Seiſin was made of this, which would be inconuenient, &c. but if the Grauntor had made Liuerie of Seiſin to the Grantee, by force of the Graunt then ſhould the Grauntee haue the Freehold and the Fee vpon the ſame condition.

¶ Here fiue things are to be obſerued: Firſt, Littleton here putteth an example of a condition precedent. Secondly, That ſuch a Condition which createth an eſtate may be made by Paroll without Deed. Thirdly, That Liuerie of Seiſin in this caſe muſt be made before the Leſſee enter, (as Littleton here ſaith at the beginning) for after his entrie liuerie made to him that is in poſſeſſion is voyd, as hath beene ſayd. Fourthly, That if no Liuerie of Seiſin be made, that no Fee ſimple doth paſſe, although the money be paid. Fifthly, That it is inconuenient, that the Fee ſimple ſhould paſſe in this caſe without liuerie of ſeiſin. Sixthly, That Argumentum ab inconuenienti, is forcible in Law, as often hath been and ſhall be obſerued. See more of this kind of condition in the Section next following. *V.S.a.60.*

¶ *Et a ſes heires, &c.* Here (&c.) implieth an eſtate in taile, or a Leaſe for life.

Sect.

Sect. 350.

CORe il ad fee simple conditionall, &c. The like is of an Estate in taile or for life. Many are of opinion against Littleton in this case, and their reason is, because the Fee simple is to commence upon a condition precedent, and therfore cannot passe vntill the condition be performed: And that here Littleton of a Condition precedent doth (before the performance thereof) make it subsequent: and for proofe of their opinion they auouch many successions of authorities that no Fee simple should passe before the condition performed. 31. E.1.tit. Feoffments & Faits 119. A letteth a Mannor to B. for term of twenty yeres, and the Deed would, That after the terme of twentie yeares that B. and his heirs should hold the sayd Mannor for euer by twelue pounds rent, A. taketh a wife and dieth before the term be past, the wife of A. demands Dower. And there Wayland chiefe Iustice saith, That the Fee and the franktenement doth repose in the person of the Lessor vntill the terme be past, for before that, the condition is not performed, for if the Lessor had alienes the land before the end of the terme, B. should not recouer by a writ of Assise, and by the death of the Lessor the chiefe Lord should haue had the wardship

31.E.1.tit.Feoffments & Faits 119.

CItem si terre soyt grant a vn home pur terme de 5. ans, ſ condition, que sil pay al Grantor deins les deux primer ans 40. Markes, que adonque il aueroit fee, ou autrement forsque pur terme de les v. ans, et liuerie de Seisin est fait a luy pur force de le graunt, ore il ad fee simple conditionall, &c. Et si en ceo case le Grauntee ne paia my al Grantor les 40. Markes deins les primers deux ans, donques immediate apres mesmes les deux ans passes, le fee et le franktenement est, et serra adiudge en le Grantor, pur ceo que le Grantor ne poet apres les dits deux ans maintenant enter sur le Grauntee, pur ceo que le Grantee ad vncore titl per trois ans dauer et occupier la terre per force de ẽ le grant. Et issint pur ceo que le condition ỹ part le Grantee est enfreint, et le Grauntor ne poet entrer la Ley mittera le fee et le franktenement en le Grauntor. Car si Grantee en cẽ case fait wast, donques apres le enfreinder de le condition, &c. et apres les deux

ALso if Land be granted to a man for term of fiue yeares, vpon condition, That if he pay to the Grauntor within the two first yeares fortie Markes, that then he shall haue fee, or otherwise but for terme of the fiue yeares, and liuerie of Seisin is made to him by force of the Grant, now he hath a fee simple conditionall, &c. And if in this case the Grauntee doe not pay to the Grantor the fortie Markes within the first 2 yeares, then immediately after the sayd two yeares past, the fee & the freehold is and shall bee adiudged in the Grauntor, because that the Grauntor cannot after the sayd two yeares presently enter vpon the Grauntee, for that the Grauntee hath yet title by three yeares to haue and occupie the land, by force of the same Grant. And so because that the condition of the part of the Grauntee is broken, and the Grauntor cannot enter, the Law will put the fee and the Freehold in the Grauntor: for if the Grauntee in this case makes Wast, then after the breach of the condition, &c. and after the two

deux ans, le grantor aucra son briefe de wast. Et ceo est bone proofe adonque que le reuersion est en luy, &c.

yeares, the Grauntor shall haue his Writ of Waste. And this is a good proofe then, that the reuersion is in him, &c.

of the heire of the Lessor, and by iudgement the wife recouered Dower, for the termor could not haue fee, all which be the words of that Booke.

12. E. 2. tit. voucher 265. I letteth Lands to B for eight yeares, and if the Lessor pay not a hundred Markes to the Lesse at the end of the tearme, that then he shall haue fee: by the non-payment of the mouey. The fee and franktenement accrueth to him, and before, the Lessee cannot bee impleaded in a Præcipe, neyther shall he vouche.

12. E. 2. tit. voucher 265.

(x) 7. E. 3. 10. 1. letteth certaine lands to N. for the tearme of ten yeares, rendring a hundred shillings by the yeare to him and his heires, and granted by deed, that if he held the lands ouer to him and his heires, that he should render by the yeare twenty pounds, the Lessor during the tearme brought an Action of debt for the rent. And there Herle Chiefe Iustice of the Common Pleas giueth the rule, that during the tearme the Lessee had but for yeares, and therefore the Action of Debt maintenable.

(x) 7. E 3 10. Pl. Com. Sayes case 272.

(y) 44. E. 3. tit. attaint. 22. and 43. Ass. p. 41. D. and A. infeoffe the two Plaintifes in the Assise, they let those lands to S. for tearme of nine yeares vpon Condition, that if the Plaintife in the Assise pay a hundred shillings to S. during the tearme that S. shall haue it but for nine yeares, and if they pay it not that S. shall haue fee. S. continueth his estate by one yeare, and after granteth his estate to one H. which H. continueth his estate by two yeares, and granted the residue of the tearme to R. and within the tearme of nine yeares the Plaintifes in the Assise pay the hundred shillings to S. R. continueth his possession after the tearme, and infeoffeth D which infeoffeth the Lord Furniuall, against whom and others without any clayme or entrie made by the Plaintifes, after the nine yeares ended, hee brought his Assise, and after adiournment recouered.

(y) 44. E. 3. tit. attaint. 22. 43. Ass p. 41.

(z) 10. E. 3. 39. & 40 R. doth let certaine lands to I. for tearme of twelue yeares, and in suretie of his tearme he maketh a Charter of the fee vpon Conditton, that if hee bee disturbed within the tearme, that he cannot hold the lands vntill the end of the tearme, that then he shall hold the lands to him and his heires for euer, and seisin was deliuered vpon the one Charter and the other. R. within the tearme plowed and sowed the land, and tooke the profits against the will of I. and I. vpon this disturbance had fee and recouered in Assise.

(z) 10. E. 3. 39. 40. 10. Ass. 15. tit. Ass. 161. Pl Com. Brownings case 135.

6. R. 2. tit. Quid iuris clamat. 20. If a Lease be made for a tearme vpon Condition, if the Lessee pay a certaine summe within the tearme, that then he shall haue fee, if hee pay the money hee shall haue the fee, but if before the day of payment the Lessor leuieth a fine to another the Lessee ought to attorne by protestation, and if he pay the money, the Conusee shall haue it, and the Conusee shall haue the rent reserued vntill the day of payment, and if Land be letten for tearme of yeares vpon Condition, that if the Lessee be ousted within the tearme by the Lessor, that hee shall haue fee, if hee be ousted, he shall haue fee by the Condition, and notwithstanding hee shall not haue any Assise, but hee must hap possession after the ouster, and of this he shall haue an Assise.

6. R. 2. tit. quid iuris clamat 20.

And generally the Bookes (*) are cited that make a diuersitie betweene a Condition precedent, and a Condition subsequent.

(*) 15. H. 7. 1. a. 14 H. 8. 18. 20. 3. H. 6. 6. b.

And lastly, they cite Dier, (a) 10. Eliz. 281. and in Say and Fullers case, Pl. Com 272. the opinions of Dyer and Browne.

(a) Dyer 10. Eliz 281. Pl. Com. 272.

Notwithstanding all this there are those that defend the opinion of Littleton, both by reason and authoritie. By reason for that by the rule of Law a liuery of seisin must passe a present Freehold to some person, and cannot giue a Freehold in futuro, as it must doe in this case, if after liuery of seisin made the Freehold and Inheritance should not passe presently, but expect vntill the Condition be performed, and therefore if a Lease for yeares bee made to beginne at Michaelmas, the remaynder ouer to another in fee, if the Lessor make liuery of seisin before Michaelmas the liuery is void, because if it should worke at all it must take effect presently and cannot expect.

Vide Litt. in the Chapter of Tenants for yeres.

Secondly, they say that when the Lessor makes liuery to the Lessee, it cannot stand with any reason that against his owne liuery of seisin a Freehold should remayne in the Lessor, seeing there is a person able to take it. But if a man by Deed make a Lease for yeares the remaynder to the right heires of I. S. and the Lessor make liuery to the Lessee secundum formam charte this liuery is void, because during the life of I. S. his right heire cannot take (for nemo est hæres viuentis) and in that case the Freehold shall not remayne in the Lessor, and expect the death of I. S. during the tearme, for albeit I. S. die during the tearme, yet the remaynder is void because a liuery of seisin cannot expect.

And they say further that seeing all the Bookes aforesaid proove that such a Condition is good, and that the liuery made to the Lessee is effectuall, by consequence the Freehold and Inheritance must passe presently, or not at all.

And it is not rare, say they, in our Bookes that words shall bee transposed and marshalled so as the feoffment or grant may take effect. (b) As if a man in the moneth of February, make a Lease for yeares reseruing a yearely rent payable at the Feasts of Saint Michael the Archangell, and the Annunciation of our Lady during the tearme, the Law (in this Case of reseruation) shall make transposition of the Feasts, viz. at the Feasts of the Annunciation, and of Saint Michael, the Archangell, that the rent may be paid yearely during the tearme. And so it is (c) in case of a grant of an Annuitie. And further they take a diuersitie in this case betweene a Lease for life, and a Lease for yeares. For in case of a Lease for life with such a Condition to haue fee, they agree that the Fee simple passeth not before the performance of the Condition, for that the liuery may presently worke vpon the Freehold: but otherwise it is in the case of a Lease for yeares. Also they take a diuersitie betweene Inheritances that lye in grant and Inheritances that lie in Liuery. For they agree that if a man grant an Annuity for yeares vpon condition, that if the Grantee pay twentie shillings, &c. within the tearme, that then he shall haue fee, the Grantee shall not haue fee vntill the Condition be performed, Et sic de similibus. But otherwise it is where liuery of Seisin is requisite, and therefore if the King make such a Lease for yeares, vpon such a condition, the fee simple shall not passe presently because in that case no liuery is made.

(b) Hill & Granges Pl. Com. 171.

(c) 12.E.3. Seignior Staffords case, lib.8. fol.74. Pl.Com. Nicho's case 487.

They also make seuerall answeres to the Authorities before cited. For as to the case in 31.E.1. they say that either the case is misreported, or else the Law is against the iudgement. For the Case is but this, that a man make a Lease of a Mannor to B for twenty yeares, and that after the twenty yeares B. shall hold the Mannor to him and his heires by twelue pound rent and (as it must bee intended) maketh liuery of seisin, in this case it is cleere (say they) that B. hath a fee simple Maintenant, for there is no Condition precedent in the case.

As for the case in 12 E.2 the case (as it is put in the Booke) is that Iohn de Marre made a Charter to Iohn de Burford of Fee simple, and the same day it was couenanted betweene them that Iohn de Burford should hold the same tenements for eight yeares, & if he did not pay a hundred Markes at the end of the tearme that the Land should remayne to Iohn de Burford, and his heires. In which case, say they, there is direct repugnancie, for first the Charter of the Fee simple was absolute, and after the same day it was couenanted betweene them, &c. this Couenant being made after the Charter, could neyther alter the absolute Charter, nor vpon a Condition precedent giue him a Fee simple that had a Fee simple before.

Seignior Staffords case vbi supra

To all the other Bookes, viz 7.E.3. 10 E 3. 10 Ass.44.E.3.43 Ass and 6.R.2. they say that being rightly vnderstood they are good Law, for in some of those Bookes, as namely in 10.E.3. 10. Ass. &c. it appeareth that there was a Charter made in suretie of the tearme, which say they must be intended thus, viz. A man maketh a Lease for yeares, the Lessee enters and the Lessor makes a Charter to the Lessee, and thereby doth grant vnto him, that if he pay vnto the Lessor a hundred Markes during the tearme, that then he shall haue and hold the Lands to him and to his heires.

In this case, say they, there need no liuery of seisin, but doth enure as an executorie grant by increasing of the state, and in that case, without question, the Fee simple passeth not before the Condition performed.

Pl.Com. in Nicholas case 487.

And therefore Littleton warily putteth his case of an estate made all at one time by one Conueyance, and a liuery made thereupon.

For Littleton himselfe in the Section before sayth, That in that case without a liuery nothing passeth of the Freehold and Inheritance.

And this diuersitie (say they) is proued by Bookes, and thereupon they cite (d) 10 E.3.54. in a Writ of Dower, the Tenant vouched to warrantie, the vouchee as to part pleaded that the husband was neuer seised of any estate whereof she might bee endowed, as to the residue the tenant pleaded that he lessed to the husband in gage vpon Condition, that if the Lessor paid ten Markes at a certaine day, that he should reenter, and if hee failed of payment, that the Land should remayne to the husband and his heires, which must be intended to be done by one entire Act, and pleaded that he paid the money at the day which is allowed to be a good plea, Ergo, the Fee simple passed by the Liuery, otherwise the plea had amounted that the husband was neuer seised, &c. And say they that it cannot be intended, that the Iudges should be of one opinion in Trinitie Tearme, and of another opinion in Michaelmass Tearme in the same yeare, and therefore (they hold) their seuerall opinions, are in respect of the said diuersitie of the cases.

(d) 10.E.3.54.

(e) 32.E.3.tit. garr.30. A Tenant by the curtesie made a Lease for yeares, & in suretie of the tearme, &c. made a Charter in Fee simple, and made Liuery according to the Charter (note a speciall mention made of Liuery in this case) and illus being taken in an Assise, whether the Tenant

Tenant by the courte ſie demiſed in fee, vpon the ſpeciall matter found, it was adiudged that a Fee ſimple paſſed, and that the heire might enter for a forfeiture, which ſay they in caſe of a Liuery is an expreſſe iudgement in the point agreeing with the opinion of Littleton.

(f) 43.E.3.35. in an Action of waſte againſt one in Lands which hee held for tearme of yeares, Belknap pleaded thus for the Defendant, that the Defendant was ſeiſed in fee, and infeoffed the Plaintife, &c. and after the Plaintife demiſed the Land backe againe to the Defendant for yeares vpon condition, that if the Defendant paid certaine money, &c. that then the Defendant might retaine the land to him and to his heires, and if not, the Plaintife might enter, &c. and pleaded that the tearme endured, and that the day of payment was not come, and demanded iudgement, if the Plaintife may maintaine an Action of waſte, inaſmuch as the Defendant had now a Fee ſimple, and ſhewed forth the Indenture of Leaſe with the condition, (which agreeth with Littletons caſe) all being done at one time, and by one Deed, and a Liuery intended, and with Littletons opinion alſo. It is true, ſay they, that Cauendiſh accounſell with the Plaintife offered to demurre, but neuer proceeded. (g) Vide 20. Aſſ pl.20.

(f) 43.E.3.35.

(g) 20.Aſſ.Pl.20.

Other Authorities they cite, but theſe (as I take it) are the principall, and therefore for auoyding of tediouſneſſe, hauing I feare beene too long vpon this point, the others I omit. Only this they adde that Littleton had ſeene and conſidered of the ſaid Bookes, and haue ſet downe his opinion where liuery of ſeiſin is made vpon a Conueyance made at one time, as hath beene ſaid, that he hath Fee ſimple conditionall.

Benigne lector vtere tuo iudicio, nihil enim impedio. Conditio beneficialis quæ ſtatum conſtruit benigne ſecundum verborum intentionem eſt interpretanda, odioſa autem quæ ſtatum deſtruit ſtricte ſecundum verborum proprietatem eſt accipienda.

Lib.8 fo.90. Frames caſe.

A Leaſe is made to a man and a woman for their liues vpon condition, that which of them two ſhall firſt marrie, that one ſhall haue fee, they entermarrie, neyther of them ſhall haue fee, for the incertaintie.

Note if the condition be to increaſe an eſtate, (that is to ſay,) to haue fee vpon payment of money to the Leſſor or his heires at a certaine day, before the day the Leſſor is attainted of treaſon or felony, and alſo before the day is executed, now is the condition become impoſſible by the act and offence of the Leſſor, and yet the Leſſee ſhall not haue fee becauſe a precedent condition to encreaſe an eſtate muſt be performed, and if it become impoſſible, no eſtate ſhall riſe.

¶ *Pur ceo que le grantor ne poet enter, &c.* Regularly when any man will take aduantage of a condition, if he may enter he muſt enter, and when he cannot enter he muſt make a clayme, and the reaſon is for that a free-hold and inheritance ſhall not ceaſe without entry or clayme, and alſo the feoffor or Grantor may waiue the condition at his pleaſure.

Pl.Com. Browning & Beſtons caſe, 133.b.

Is if a man grant an Aduowſon to a man and to his heires vpon condition, that if the Grantor, &c. pay 20.pound on ſuch a day, &c. the ſtate of the Grantee ſhall ceaſe or bee vtterly void. The Grantor payeth the mony yet the ſtate is not reueſted in the Grantor before a clayme, and that clayme muſt be made at the Church. (d) And ſo it is of a reuerſion or remainder of a Rent or Common or the like, there muſt be a clayme before the ſtate be reueſted in the Grantor by force of the condition, and that clayme muſt be made vpon the land.

Vid. Littleton cap. Villain.
(d) *Pl. Com. Brownings caſe, 133.b.*

A fortiori in caſe of a Feoffment which paſſeth by Liuery of ſeiſin there muſt be a re-entry by force of the condition before the ſtate be voide.

42.E.3.1.

If a man bargaineth and ſelleth land by Deed indented and inrolled with a Prouiſo that if the Bargainer pay, &c. that then the ſtate ſhall ceaſe and be voide, he payeth the money, the ſtate is not reueſted in the Bargainer before a re-entry, and ſo it is if a bargaine and ſale be made of a Reuerſion Remainder Aduowſon, Rent, Common, &c. And ſo it is if lands be deuiſed to a man and his heires vpon condition, that if the Deuiſee pay not 20.pound at ſuch a day, that his eſtate ſhall ceaſe and be voyde; the money is not paid, the ſtate ſhall not bee veſted in the heire before an entrie. And ſo it is of the Reuerſion or Remainder, an Aduowſon, Rent, Common, or the like.

Lib.2.fo.50. Sir Hugh Cholmeleys caſe.

But the ſaid rule hath diuers exceptions. Firſt, in this preſent caſe of Littleton, for that he can make no entrie, hee ſhall not be driuen to make any clayme to the reuerſion, for ſeeing by conſtruction of Law the freehold and inheritance paſſeth Maintenant out of the Leſſor; by the like conſtruction, the freehold and inheritance by the default of the Leſſee ſhalbe reueſted in the Leſſor without entrie or clayme.

Vid. lib.1.fol.174. Digs caſe.
20.E.4.18.19.

2. If I grant a Rent charge in fee out of my land vpon condition, there if the condition be broken, the rent ſhall be extinct in my land, becauſe I (that am in poſſeſſion of the land) needs make no clayme vpon the land, and therefore the Law ſhall adiudge the rent voyde without any clayme.

Pl Com. Brownings caſe, 133.b. 20.E.4.19.

3. If a man make a feoffment vnto me in fee vpon condition that I ſhall pay vnto him 20. pound at a day, &c. before the day I lette vnto him the land for yeares reſeruing a rent, and

20.E.4.19. 20.H.7.4.b.

after faile of payment the Feoffee shall retaine the land to him and to his heires, and the rent is determined and extinct for that the Feoffor could not enter, nor need not clayme vpon the land for that he himselfe was in possession, and the condition being collaterall is not suspended by the Lease, otherwise it is of rent reserued.

Lib.1.174. Digges case. 4. If a man by his Deed in consideration of fatherly loue, &c. couenant to stand seised to the vse of himselfe for life, and after his decease to the vse of his eldest sonne in taile, the remainder to his second sonne in taile, the remainder to his third sonne in fee with a Prouiso of reuocation, &c. the father doth make a reuocation according to the Proviso, the whole estate is maintenant reuested in him without entrie or clayme for the cause aforesaid

¶ *Le grantee ad vncore title pur 3.ans.* **By this it appeareth that** albeit the Lessee had Pro tempore a fee simple, yet after that fee simple is deuested out of him, and vested in the Lessor he shall hold the lands for three yeares by the expresse limitation of the parties.

Pl. Com. in Fulmerston case, 107.b. If a man make a Lease for 40. yeares, the Lessee afterwards taketh a Lease for 20. yeares vpon condition that if he doth such an act, that then the Lease for 20. yeares shall be voide, and after the Lessee breake the condition, by force whereof the second Lease is voide, notwithstanding the Lease for 40. yeares is surrendred, for the condition was annexed to the Lease for 20. yeares, but the surrender was absolute. So it is if a man make a Lease for 40. yeares, and the Lessor grant the reuersion to the Lessee vpon condition, and after the condition is broken, the tearme was absolutely surrendered. And the diuersitie is when the Lessor grants the reuersion to the Lessee vpon condition, and when the Lessee grants or surrenders his estate to the Lessor, for a condition annexed to a surrender may reuest the particular estate, because the surrender is conditionall. But when the Lessor grants the reuersion to the Lessee vpon condition, there the condition is annexed to the reuersion and the surrender absolute.

7.E.4.29. 14.E.4.6. 45.E.3.

8.E.2.Aff.395. A gardeine in Chiualry tooke a feoffment of the infant within age that was in his ward, and the infant brought an Assise, and the Gardein shall be adiudged a Disseisor which proueth that the feoffment as against the infant was voide, and yet by acceptance thereof the interest of the Gardein was surrendred.

30.E.3.27. A man maketh a Lease for terme of life by Deede, reseruing the first seuen yeares a Rose, and if the Lessee will hold, the land after the seuen yeares, to pay a rent in money, the Lessee will not hold ouer, but surrender his tearme; In this case in iudgement of Law he had but a tearme for seuen yeares. And so it is if a man make a Lease for life, and if the Lessee within one yeare pay not 20. shillings, that he shall haue but a tearme for two yeares if he pay not the money the estate for life is determined, and he shall haue the land but for two yeares.

¶ *Ceo est bone proofe adonques que le reuersion est in luy, &c.* Here is implyed that no man can haue an action of waste, vnlesse the reuersion be in him, and by the Authority of our Author the reason of a case, and well applyed is a good proofe in Law.

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¶ MEs en tiels cases de feoffment sur condition, lou le feoffor poit loyalment enter pur le condition enfreint, &c. ia le feoffor nad le frankstenemēt deuant son entrie, &c.

BVt in such cases of feoffment vpon condition, where the feoffor may lawfully enter for the condition broken, &c. there the feoffor hath not the freehold before his entrie, &c.

This vpon that which hath beene said is euident and needeth no further explanation.

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3.Marie 134. Dier 14.Eliz.Dier.311.b. 2.H.4.5. 44.E.3.9. Lib.2.fo.79. 80.81. in Seigneir Cromwells case.

¶ *QVe le feoffee donera, &c.* Here is no time limitted, therefore the Feoffee by the Law hath time du-

¶ **ITem si feoffment soit fait sur tiel condition, que l'feoffee donera le terre al feoffor,**

ALso if a feoffment be made vpon such condition that the feoffee shall giue the land to

for, & a la feme del feoffor, a auer & tener a eux, & a les heyres de lour deux corps engendres, & pur default de tiel issue, le remainder al droit heyres le feoffor. En ceo cas si l'baron deuy, viuant la feme, deuant ascun estate en le taile fait a eux, &c. donques doit le feoffee per la ley faire estate a la feme cy pres le condition, et auxy cy pres lentent de le condition que il poit faire, ce est a scauoir, de lesser la terre al fem̃ pur terme de vie sans impeachment de wast, l'remainder apres son decease a les heyres de corps sa baron de luy engendres, & pur default de tiel issue, le remainder as droit heires le baron. Et la cause pur que le lease serra en cest cas a la feme sole sans impeachment de wast, est pur ceo q̃ le condition est, q̃ lestate serra fait al baron & a sa feme en taile. Et si tiel estate bee este fait en le vie le baron, donques apres le mort le baron el bee ewe estate ent en le taile: quel estate est sans impeachment de wast; Et issint il est reason, que cy pres que

the feoffor, and to the wife of the feoffor, to haue & to hold to them and to the heires of their two bodyes engendred, and for default of such issue the remainder to the right heires of the feoffor. In this case if the husband dyeth liuing the wife before any estate in taile made vnto them, &c. then ought the feoffee by the law to make an estate to the wife as neere the condition, and also as neere to the entent of the condition as he may make it, That is to say, to let the land to the wife for terme of life without impeachment of waste the remainder after his decease to the heires of the body of her husband on her begotten, and for default of such issue the remainder to the right heires of the husband. And the cause why the lease shall bee in this case to the wife alone without impeachment of waste is for that the condition is, that the estate shall be made to the husband & and to his wife in taile. And if such estate had been made in the life of the husband, then after the death of the husband she should haue

ring his life, vnlesse he be hastened by the request of the Feoffor or the heires of his body, as Littleton saith in the next Section.

¶ *Si le baron deuie, &c.* But in this case if the Feoffee dyeth before any Feoffment made then is the condition broken, because he made not the estates, &c. within the time prescribed by the Law. But if the feoffment be made vpon condition that the Feoffee before the feast of St. Michael the Archangell next following giue the land to the Feoffor and to his wife in taile vt supra, and before the day the Feoffee dyeth, the state of the heire of the Feoffee shall be absolute, because a certaine time is limitted by the mutuall agreement of the parties, within which time the condition becommeth impossible by the act of God as hath beene said before, and therefore it is necessary when a day is limited, to adde to the condition, that the Feoffee or his heires doe performe the condition, but when no time is limitted, then the Feoffee at his perill must performe the condition during his life (although there be no request made) or else the Feoffor or his heires may re-enter.

15.H.7.13.33.H.6.26.27. 9.Eliz.Dier.262. Pl.Com.456 Lib.2.fo.79.Seignior Cromwells case.

¶ *Fait a eux, &c.* Here the (&c.) implyeth according to the condition with the remainder ouer.

¶ *Al feoffor & a la feme, &c.* Here it appeareth that albeit the Feme bee a stranger, yet the Feoffee is not bound to make it within conuenient time, because the Feoffee who is privy to the condition is to take ioyntly

27.E.3.Dower 135. Seignior Cromwells case, vbi supra.

toyntly with her. And so it is if the condition be to enfeoffe the Feoffor and an estranger, the Feoffee hath time during his life vnlesse he be hastened by request. Otherwise it is (as hath beene said) where the condition is to enfeoffe a stranger or strangers onely.

If a man make a feoffment in fee, vpon condition that the Feoffee shal make a gift in taile to the Feoffor, the remainder to a stranger in fee, there the Feoffee hath time during his life, as is aforesayd,

home poit faire estate a lentent de condition, &c. q̃ il serroit fait, &c. coment que el ne poit auer estate en taile si come el puisſoit auer si le done en le taile vst estre fait a sa baron et a luy en le vie sa baron.

had an estate in taile, which estate is without impeachment of waste. And so it is reason, that as neere as a man can make the estate to the intent of the condition, &c. that it should bee made, &c. albeit she cannot haue estate in taile, as she might haue had if the gift in taile had been made to her husband and to her in the life of her husband, &c.

Seignior Cromwels case vb. sup. because the Feoffor who is partie and priuie to the condition, is to take the first estate. But if the Condition were to make a gift in taile to a stranger, the remainder to the Feoffor in fee, there the Feoffee ought to doe it in conuenient time, for that the stranger is not priuie to the condition, and he ought to haue the profits presently, as before hath beene sayd.

¶ *De faire estate al feme cy pres le condition, & auxy cy pres lentent del Condition que il poet faire, &c.*

A. infeoffe B. vpon condition that B. shall make an estate in Frankmarriage to C. with one such as is the daughter of the Feoffor; in this case he cannot make an estate in Frankmarriage, because the estate must moue from the Feoffee, and the daughter is not of his bloud, but yet he must make an estate to them for their liues, for this is as neere the Condition as he can. And so it is if the Condition be, to make to A. (which is a meere Lay man) an estate in frankalmoigne, yet must he make an estate to him for his life, for the reason heere yelded by Littleton.

A diuersitie is to be vnderstood betweene conditions that are to create an estate, and conditions that are to destroy an estate: for here it appeareth, That a condition that is to create an estate, is to be performed by construction of Law, as neere the condition as may be, and according to the entent and meaning of the condition, albeit the letter and words of the condition cannot be performed: but otherwise it is of a condition that destroyeth an estate, for that is to be taken strictly, vnlesse it be in certaine speciall cases: and of this somewhat hath beene sayd before in this Chapter.

30.H.8.fit.Condit.Br.190. V.33.H.8.fit.Iointen.Br.62. As if a man morgage his land to W. vpon Condition, that if the Morgagor and I.S. pay twentie shillings at such a day to the Morgagee, that then he shall re-enter, the Morgagor dieth before the day, I.S. payes the money to the Morgagee, this is a good performance of the condition, and yet the letter of the condition is not performed. But if the Morgagor had been aliue at the day, and he would not pay the money, but refused to pay the same, and I.S. alone had tendred the money, the Morgagee might haue refused it. But if a man make a lease to two for yeares, with a prouiso, If the Lessees die during the terme, the Lessor shall re-enter, one Lessee alien his part and die, the Lessee cannot re-enter, but the Assignee shall enioy the terme so long as the Suruiuor liueth, and the reason is, because the Lease by the prouiso is, Not to cease till both be dead. But in the former case, albeit the Morgagor be dead, yet the act of God shall not disable I.S. to pay the money, for thereby the Morgagee receiues no preiudice: And so it is in that case, if I.S. had died before the day, the Morgagor might haue payd it.

Lib.2.fo.79.No.81. Seignior Cromwels case. 2.H.4.5. And here is to be obserued a diuersitie when the Feoffee dieth, for then (as hath beene sayd) the condition is broken, and when the Feoffor dieth, for then the state is to bee made as neere the intent of the Condition as may be.

¶ *Al feme pur terme de sa vie sans impeachment de wast.*

Here it appeareth, That this estate for life ought to be without impeachment of wast, and yet if the wife doth accept of an estate for life, without this clause, without impeachment of wast, it is good, because the state for life is the substance of the Grant, and the priuiledge to be without impeachment of wast is collaterall, and onely for the benefit of the wife, and the exclusion of it onely for the benefit of the heire.

2.H.4.5. Seignior Cromwels case vb. supra. Also if the wife take husband before request made, and then they make request, and the state is

is made to the husband and wife, during the life of the wife this is a good performance of the condition, albeit the estate be made to the husband and wife: where Littleton saith it is to bee made to the wife, but it is all one in substance, seeing that the limitation is during the life of the wife.

¶ *Sauns impeachment de Wast*, Absque impetione vasti, (that is) without any challenge or impeachment of wast, and by force hereof the Lessee may cut downe the Trees and conuert them to his owne vse. Otherwise it is if the words were, Sauns impeachment per ascun Action de Wast, for then the discharge extends but to the Action, and not to the Trees themselues, and in that case the Lessor shall haue them.

See in my Reports lib. 11. fo 83. Lib. 9. fo. 9. b. 2. 23.

And it is to be obserued, That after the decease of the husband the state is not to bee made to the wife and the heires of her bodie by her late husband ingendred, and so to haue an estate of Inheritance as she should haue had by surruitor,, if the estate had beene made according to the condition, but onely an estate for life without impeachment of wast, &c. for that by the authoritie of Littleton is not so neere the intent of the condition, as the case that Littleton putteth. But I will search no further into this case, but leane it to the learned and iudicious Reader.

¶ *Et apres son decease a les heires del corps le Baron de luy engendres.*

Note here, admit that there were two Issues in taile, the remainder shall presently vest only in the eldest, and yet if he dieth without Issue, it shall per formam doni vest in the youngest, as hath beene sayd in the Chapter of Estate taile: and so it is tacite proued heere, for otherwise the condition (if there were two issues) could not be performed.

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¶ Item en ceste case si le baron et la feme ont issue, et deuiont deuant le done en le Taile fait a eux &c. donques le Feoffee doit faire estate al Issue et a les heires de corps son pere et son mere engendres, et pur default de tiel Issue le remainder a les droit heires le Baron, &c. Et mesm la Ley est en auters cases semblables. Et si tiel Feoffee ne voet faire tiel estate, &c. quaunt il est reasonablement requise per eux que deuoyent auer estate per force de le condition, &c. donque poet le Feoffor ou ses heyres enter.

ALso in this case if the husband and wife haue Issue, & die before the gift in taile made to them, &c. the the feoffee ought to make an estate to the Issue, and to the heires of the bodie of his father and his mother begotten, and for default of such Issue, &c. the remainder to the right heires of the husband, &c. And the same Law is in other like cases: and if such a Feoffee will not take such estate, &c. when he is reasonably required by them which ought to haue the state by force of the Condition, &c. then may the Feoffor or his heires enter.

¶ *Quant il est reasonablement requise per eux queux deuoient auer estate per force de le Condition.*

Note here it appeareth, That the Feoffee hath time during his life to make the estate, vnlesse he be reasonably required by them that are to take the estate. This is to bee intended of parties or privies, and not of meere strangers, for there (as hath beene sayd) the state must be made in conuenient time.

And concerning the request it is to be known, that when the request is made, the partie or privy must request the feoffee at a time certaine, to be vpon the land, and to make the state according to the condition, for seeing no time certaine is prescribed for the making of the state, and it is incertain when the request shall bee made, such request and notice must be made as hath bin sayd before in this chap. & Of this Section, with the (&c.) there needeth not, vpon that which hath been said, any farther explication.

Sect.

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¶ *Qve le feoffee re-infeoffera pluſors homes.* By the re-feoffment it is implied to be made to the Feoffors, for a feoffement ouer to ſtrangers cannot be ſayd a Re-feoffement, and if the feoffement ſhould be made ouer to ſtrangers onely, then as hath beene often ſayd, it muſt bee made in conuenient time.

¶ *Al Heire celuy que ſurueſquiſt, a auer & tener a luy & a les heires celuy que ſurueſquiſt.* Hereupon queſtions haue beene made, wherefore the Habendum is not to the heires of the heire, and for what reaſon it is by Littleton limitted to the heires of the ſuruiuor. And the cauſe is, for that if it were made to the heirs of the heire, then ſome perſons by poſſibilitie ſhould be inheritable to the land, which ſhould not haue inherited if the ſtate had beene made to the Suruiuor and his heires, and conſequently the condition broken.

¶ ITem ſi feoffmēt ſoit fait ſur condition, que le feoffee re-infeoffet̄ pluſs hōes a auer et tener a eux et a lour heires a touts iours, et touts ceux que deuoient auer eſtat̄ moront deuant aſcun eſtat̄ fait a eux, donque doit l' feoffee faire eſtate al hñe celuy que ſurueſquiſt de eux, a auer & tener a luy et a les heires celuy que ſurueſquiſt.

ALſo if a Feoffement bee made vpon condition, That if the feoffee ſhal re-enfeoffe many men, to haue and to hold to them and to their heirs for euer, & al they which ought to haue eſtate, die before any eſtate made to them, then ought the feoffee to make eſtate to the heire of him which ſuruiues of them, to haue & to hold to him and to the heires of him which ſuruiueth.

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For example, If the Suruiuor tooke to wife Alice Fairefield, in this caſe if the limitation were to the ſonne and his heires, then if the ſonne ſhould die without heires of his father, the bloud of the Fairefields (being the bloud of his mother) ſhould inherit. But if the limitation be to the right heires of the father, then ſhould not the bloud of the Fairefields by any poſſibilitie inherit, for then it is as much as if the ſtate had beene made to the ſuruiuor and his heires: And therefore theſe words, (Et à les heires celuy que ſurueſquiſt) which many haue thought ſurperfluous, are verie materiall. Note well this kind of Fee ſimple, for it is worthy the obſeruation: but ſufficient hath beene ſayd to open the meaning of Littleton, and therefore I will dius no deeper into this point, but leaue it to the further conſideration of the learned Reader.

Section 355.

¶ LIttleton hauing ſpoken of defaults of performance, or expreſſe breaches of conditions, ſpeaketh now in what caſes the Feoffee in iudgement of Law doth ſo diſable himſelfe to performe the Condition: And of diſabilities ſome bee by act of the partie, and ſome by act in Law.

¶ *Ou a doner en taile a vn auter, &c.* Here is implied an eſtate for life or for yeares, &c.

¶ ITem ſi feoffmēt ſoit fait ſur condition, denfeoffer vn auter, ou ô doner en taile a vn aut̄, &c. ſi le feoffee deuant l' pformance del condition enfeoffa vn eſtranger, ou fait vn leaſe pur t̄me de vie, donques poet l' feoffor

ALſo if a Feoffement be made vpon condition, To enfeoffe another, or to make a gift in taile to another, &c. if the Feoffee before the performance of the Condition, enfeoffe a ſtranger, or make a Leaſe for life, then

foy ſes heires enter, &c. pur ceo que il ad luy meſme diſable de perfoymer le Condition, entant que il ad fait eſtate a vn auter, &c.

may the Feoffor and his heirs enter, &c. becauſe he hath diſabled himſelfe to performe the cõdition in aſmuch as he hath made an eſtate to another, &c.

C Enfeoffe vn Eſtranger, ou fait vn Leaſe pur terme de vie. This is a diſabilitie by the act of the partie, foy herein the Feoffor hath diſabled himſelf to make the Feoffement oy other eſtate according to the Condition. And to ſpeake once foy all, the Feoffor is diſabled when he cannot conuey the Land out according to the Condition in the ſame plight, qualitie and freedome as the Land was conueyed to him, foy ſo the Law requireth the ſame, as ſhall manifeſtly appeare hereafter. And here where our Author ſpeaketh of a feoffment, he includeth an eſtate taile as well as the fee ſimple.

13.H.7.23.b. 32.E.3.barre 264.21.Aſſ.28.38.Aſſ.pl.7.

Section 356.

CEn meſme le manner eſt, ſi le feoffee, deuant le condition perfoyme leſſa meſme la terre a vn eſtranger, pur terme des ans, en ceſt caſe le feoffoy et ſes heires poyent enter, &c. pur ceo que le feoffee ad luy diſable de faire eſtate de les tenements accoydant a ceo que eſtoit en les tenements, quant eſtate ent fuit fait a luy. Car ſil voile faire eſtate de les tenements accoydant a le condition, &c. donques poit le leſſee pur terme dans enter & ouſte meſme celuy a que leſtate eſt fait, &c. et occupier ceo durant ſon terme.

CIN the ſame manner it is if the Feoffee before the Condition performed, letteth the ſame land to a ſtranger for tearme of yeares, in this caſe the Feoffor and his heires may enter, &c. becauſe the Feoffee hath diſabled him to make an eſtate of the tenements according to that which was in the tenements when the ſtate thereof was made vnto him. For if hee will make an eſtate of the tenements according to the Condition, &c. then may the Leſſee for yeares enter and ouſte him to whom the eſtate is made, &c. and occupie this during his tearme.

C*S Ile feoffee deuant le condition performe leſſa meſme la terre a vn eſtranger pur terme des ans, &c.* Here the &c. implyeth a Leaſe to take effect in futuro aſwell as in præſenti, alſo a Leaſe foy one yeare oy halfe a yeare, &c.

The reaſon of this is euidently ſet doſwne before. And againe of diſabilities ſome be by Act in præſenti, whereof Littleton hath put two examples, and ſome in futuro, whereof now he will ſpeake in the next Section.

Sect. 357.

CET pluſoys ont dit, que ſi tiel feoffement ſoit fait a vn home ſole ſur ch le condition, & deuant q̃ il ad per-

AND many haue ſaid that if ſuch feoffment be made to a ſingle man vpon the ſame Condition, and before hee hath per-

CFirſt here is an example of a diſability both by act in Law, and in future, foy by marriage the wife is entitled by Law to Dower, after the death of her huſband.

Secondly, It appeareth, that albeit the wife by the marriage is but intitled to haue

(a) 13.H.7.23.b. 34.E.3.dower.127.M.27.E.3 ou.dower 135. 28.Aſſ.Pl.4. 21.H.7.7.6. lib.2.fol.59.b.

Iohan. Warrington mast.

haue dower, & the estate which she is to haue in futuro, viz. after the decease of her husband, yet this a present cause of entrie. As a Lease for yeares to begin at a day to come is a present disabilitie and cause of entrie, for that the Land is not in that freedome and plight, as it was conueyed to the Feoffee, and after the state made ouer according to the Condition the land shall be charged therewith.

¶ *En vn auter plight.* Plight is an old English word, and here signifieth not only the estate, but the habit and qualitie of the land, and extendeth to rent charges, and to a possibilitie of Dower. Vide Sect. 289. where Plight is taken for an estate or interest of and in the land it selfe, and extendeth not to a Rent Charge out of the Land.

¶ *A vn home sole.* For if the Feoffee were married at the time of the feoffement, then the Dower can bee no disabilitie, because the Land shall remaine in such Plight as it was at the time of the feoffment made vnto him.

forme meisme la condition il prent feme, donques le feoffor et ses heires maintenant poient enter, pur ceo que sil fesoit estate accordant a le condition, et puis morust, donques la feme serra endowe, et poit recouer sa dower per briefe de dower, &c. et issint per le prisel del feme les tenements sont mis en vn auter plite que ne fueront al temps del feoffment sur condition, pur ceo que adonques nul tiel feme fuit dowable, ne serroit dowe per la ley, &c.

formed the same Condition hee taketh wife, then the Feoffor and his Heires maintenant may enter, because, if hee hath made an estate according to the Condition & after dieth, then the wife shall be endowed, and may recouer her Dower by a Writ of Dower, &c. and so by the taking of a wife, the Tenements bee put in another plight then they were at the time of the feoffment vpon Condition, for that then no such Wife was dowable, nor should bee endowed by the Law, &c.

¶ *Donques le feoffor & ses heires maintenant poient enter.* Here it appeareth, that seeing that for this title or possibilitie the Feoffor may presently enter, that albeit the wife happen to die before the husband, so as this title or possibilitie take no effect, yet the Feoffor may re-enter, for the Feoffee being disabled at any time though the same continue not, yet the Feoffor may re-enter, for in that case, he that is once disabled is euer disabled. And herein a diuersitie is to be obserued betweene a disabilitie for a time on the part of the Feoffee, and a disabilitie for a time of the part of the Feoffor. For if a man maketh a feoffment in fee vpon condition that the Feoffee before such a day shall re-enfeoffe the Feoffor, the Feoffee taketh wife, and the wife dyeth before the day, yet may the Feoffor re-enter.

So it is if the Feoffee before the day entreth into Religion, and is professed, and before the day is deraigned, yet the Feoffor may re-enter.

21. E. 4. 35. So it is if the Feoffee before the day make a feoffment in fee, and before the day taketh back an estate to him and his heires, yet the Feoffor may re-enter.

Albeit in these cases a certaine day be limited, yet the Feoffee being once disabled is euer disabled. And so it is when no time is limited by the parties, but the time is appointed by the Law.

But if a man make a feoffment in fee vpon Condition, that if the feoffor or his heires pay a certaine summe of money before such a day, the Feoffor commit Treason, is attainted and executed, now is there a disabilitie on the part of the Feoffor, for he hath no heire, but if the heire be restored before the day he may performe the Condition, as it was resolued (*) Trin. 18. Eliz. in Communi Banco in Sir Thomas Wiars case, which I heard and obserued. Otherwise it is if such a disabilitie had growne on the part of the Feoffee, and the reason of the diuersitie is, for that as Littleton saith, maintenant by the disabilitie of the Feoffee, the Condition is broken, and the Feoffor may enter, but so it is not by the disabilitie of the Feoffor, or his heires, for if they performe the Condition within the time it is sufficient, for that they may at any time performe the Condition before the day. And so it is if the feoffor enter into Religion, and being the

(*) Trin. 18. Eliz. in Communi Banco in Sir Thomas Wiats case.

the day is deraigned, he may performe the Condition for the cause aforesaid. Et sic de similibus. The (&c.) in this Section are sufficiently explayned.

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¶ EN meſme le maner eſt, ſi le feoffee charge la terre per ſon fait dun rent charge deuant le performance del condition, ou ſoit oblige en vn eſtatute de le Staple, ou ſtatute Merchant, en tielx cases le feoffor et ſes heires poyent entrer &c. Cauſa qua ſupra. Car quecunque que venuſt a les tenemts per le feoffment de le feoffee, eux couient eſtre liables, et eſtre mis en execution per force de leſtatute Merchant, ou de ſtatute del Staple, Quære. Mes quãt le feoffor ou ſes heires, pur les cauſes auantdits, aueront enter, come ils deuoyent, come il ſemble, &c. donques touts tielx choſes que deuant tiel entrie puiſſent troubler ou encumber les tenements iſſint dones ſur condition, &c. quant a meſmes les tenemts ſont ouſterment defeats.

¶ IN the ſame manner it is if the Feoffee charge the land by his Deed with a rent charge before the performance of the Condition, or be bound in a Statute Staple or Statute Merchant, in theſe caſes the Feoffor and his heires may enter, &c. *Cauſa qua ſupra.* For whoſoeuer commeth to the Lands by the feoffment of the Feoffee, they ought to bee lyable, and put in execution by force of the Statute Merchant, or of the Statute Staple. *Quære.* But when the Feoffor or his heires for the cauſes aforeſaid, ſhall haue entred, as it ſeemes, they ought, &c. then all ſuch things which before ſuch entrie might trouble or incumber the Land ſo giuen vpon Condition, &c. as to the ſame Land, are altogether defeated.

¶ *Poyent entrer, &c.* And here it is to bee vnderſtood, that the grant of the rent charge is a preſent diſability of the Feoffes, and therefore albeit the Grantee doth bring a Writ of Annuitie, and diſcharge the Land of it, ab initio, yet the cauſe of entrie being once giuen by the act of the Feoffee, the Feoffor may re-enter. And ſo it is if the grant of the rent charge were made for life, and the Grantee died, before any day of payment, yet the Feoffor may re-enter.

13.H.7.23.b. 44.E.3.9.b. 26.E.3.73. 20.H.6.34. *Iulius Wynningtons caſe. vbi ſupra*

The like Law is of any iudgement giuen againſt the Feoffee wherein debt or damages are recouered.

¶ *Ou ſoit oblige in vn Statute de la Staple, &c.* If the Feoffee be diſſeiſed, and after bindeth himſelfe in a Statute Staple, or Merchant, or in a Recognizance, or take wife, this is no diſabilitie in him, for that during the diſſeiſin, the Land is not charged therewith, neyther is the land in the hands of the diſſeiſor liable thereunto. And in that caſe if the wife die or the Conuſee releaſe the Statute or Recognizance, and after the diſſeiſee doth enter, there is no diſabilitie at all, becauſe the Land was neuer charged therewith, and therefore in that caſe the Feoffee may enter and performe the Condition in the ſame plight and freedome as it was conueyed vnto him.

Lib.2.fol.59.60. Iulius Wynningtons caſe.

And it is to be obſerued, that Littl. putteth theſe caſes as examples, for there are ſome other diſabilities implyed, that are not here expreſſed.

18.*Aſſ.Pl.Prim.19.E.3.19 Lib.2.fol.80.b. Sir Cromwels caſe.*

The Lord Clifford did hold his Barony and the Sheriffwicke of Weſtmerland of the King by Grand Sergantie in capite, and the King gaue him Licence that he might infeoffe thereof diuers Chaplyns in fee, ſo that they ſhould giue the ſame to the Lord Clifford and the heires

males of his body the remainder ouer, &c. the Lord Clifford according to the Licence inrolled the Chaplyns, and before they made the reconueyance the Lord Clifford dyed, and it was adiudged that the heire might enter for the condition broken. For in this case the Feoffees were bound by Law to haue made the gift in tayle to the Lord Clifford himselfe, albeit he neuer made any request, for otherwise they pursued not the Licence, and if they should make the state to the issue of the Lord Clifford, then might the King seise the Barony, &c. for default of a Licence, and that in default of the Feoffees. And then the same should not be in the same plight and freedome as it was at the time of the feoffment made vpon condition which is worthy of obseruation.

If a man grant an Aduowson vpon condition that the Grantee shall regrant the same to the Grantor in taile. In this case if the Church become voyde before the regrant or before any request made by the Grantor, he may take aduantage of the condition, because the Aduowson is not in the same plight as it was at the time of the grant vpon condition. And so was it resolued, (*) Pasch.14.Eliz. in comuni banco, betweene Andrews and Blunt, which I heard and obserued, and which my Lord Dier hath omitted out of his report of that case, and therefore the Grantee in that case at his perill must regrant it before the Church become voyde, or else he is disabled, otherwise he hath time during his life if he be not hastened by request.

(*) Pasch.14.Eliz.211.Dier

If the Feoffee suffer a Recouery by default vpon a fayned title, before execution sued the Feoffor may re-enter for this disability. Et sic de similibus.

44.E.3.9.

Sect. 359.

CEt en le fait est nul condition, &c. either in Deed or in Law.

CEt le feoffment est en tiel force sicome nul tiel fait vst este fait. And the reason hereof is, for that the estate passeth by the Liuery of seisin. And in this case the Feoffor vpon the deliuery of seisin must expresse the state to him and his heires or to the heires of his body, &c.

18.E.3.19.36. 17.Ass.p.20. 8.H.5.8. 27.H.6.

If an agreement be made betweene two, that the one shall enfeoffe the other vpon condition in surety of the payment of certaine money, and after the Liuery is made to him and his heires generally, the state is holden by some to be vpon condition in asmuch as the intent of the parties was not changed at any time, but continued at the time of the Liuery.

34.Ass.pl.1.

CItem, si vn home fait vn fait de feoffment a vn auter, & en le fait est nul condition, &c. & quant le feoffor a luy voyle faire liuerie de seisin per force de mesme le fait, il fait a luy le liuerie de seisin sur certaine condition, en cest cas rien de les tenements passa per le fait. pur ceo que le condition nest compryse deins le fait, & le feoffment est en tiel force sicome nul tiel fait vst este fait.

ALso if a man make a deed of feoffment to another and in the deed there is no condition, &c. & when the feoffor will make liuery of seisin vnto him by force of the same deed, hee makes liuery of seisin vnto him vpon certain condition, in this case nothing of the tenemẽts passeth by the deed for that the condition is not compriſed within the deed, & the feoffment is in like force as if no such deed had beene made.

If a man make a Charter of feoffment in fee, and the feoffor deliuer seisin for life, the Feoffee shall hold it but for life, but if the Liuery be expressly for life, and also according to the Deed the whole fee simple shall passe because it hath a reference to the Deed.

13.E.3.tit.Estoppell 177. 19.E.3.ibid.184.

Sect. 360.

CItem si feoffment soit fait, &c. And

CItem si feoffmẽt soit fait sur tiel condition,

CAlso if a feoffment be made

condition, q̄ le feoffee ne alienera la terre a nulluy, ceſt condition eſt voide, pur ceo que quant home eſt enfeoffe de terres ou tenements il ad power de eux alener a aſcun perſon per la ley. Car ſi tiel condition ſerroit bone donque la condition luy ouſteroit de tout le power que la ley luy dona, le quel ſerroit enconter reaſon, & pur ceo tiel condition eſt voide.

vpon this condition that the feoffee ſhall not alien the land to any, this condition is voide, becauſe when a man is infeoffed of lands or tenements he hath power to alien them to any perſon by the law. for if ſuch a condition ſhould bee good; then the cōdition ſhould ouſté him of all the power which the law giues him, which ſhould bee againſt reaſon, & therefore ſuch a condition is voide.

the like Law is of a deuiſe in fee vpon condition that the Deuiſee ſhall not alien, the condition is voide, and ſo it is of a grant, releaſe, confirmation or any other conueyance whereby a fee ſimple doth paſſe. For it is abſurd and repugnant to reaſon that hee, that hath no poſſibility to haue the land reuert to him, ſhould reſtraine his Feoffee in fee ſimple of all his power to alien. And ſo it is if a man be poſſeſſed of a Leaſe for yeares, or of a horſe, or of any other chattell reall or perſonall, and giue or ſell his whole intereſt, or propertie therein vpon condition that the Donee or Vendee ſhall not alien the ſame, the ſame is voide, becauſe his whole intereſt and propertie is out of him, ſo as he hath no poſſibility of a Reuerter, and it is againſt Trade and Traffique, and bargaining and contracting betweene man and man: and it is within the reaſon of our Author that it ſhould ouſter him of all power giuen to him. *Iniquum eſt ingenuis hominibus non eſſe liberam rerum ſuarum alienationem*, and *Rerum ſuarum quilibet eſt moderator, & arbitor.* And againe, *Regulariter non valet pactum de re mea non alienanda.* But theſe are to be vnderſtood of conditions annexed to the grant or ſale it ſelfe in reſpect of the repugnancie, and not to any other collaterall thing, as hereafter ſhall appeare. Where our Author putteth his caſe of a feoffment of land, that is put but for an example: for if a man be ſeiſed of a Seigniory or a Rent, or an Vniſon or Common or any other inheritance that lyeth in grant, and by his Deede granteth the ſame to a man and to his heyres vpon condition that he ſhall not alien, this condition is voide. But ſome haue ſaid that a man may grant a Rent charge newly created out of lands to a man and to his heyres vpon condition that he ſhall not alien that, that is good, becauſe the rent is of his owne creation, but this is againſt the reaſon and opinion of our Author, and againſt the height and purity of a fee ſimple.

21.H.6.34.a. 8.H.7.10.b. 33.Aſſ.11.24. Doct & Stud.39.124. 13.H.7.23.

Argumentum ex abſurdo Vid.Sect.722.

A man before the Statute of *Quia Emptores terrarum* might haue made a feoffment in fee, and added further, That if hee or his heires did alien without Licence that he ſhould pay a fine, that this had beene good. And ſo it is ſaid, that then the Lord might haue reſtrained the alienation of his Tenant by condition, becauſe the Lord had a poſſibilitie of reuerter, and ſo it is in the Kings caſe at this day becauſe he may reſerue a tenure to himſelfe.

14.H.4.13.H.7.23.

21.H.7.8 Lib.5. 56.Knights caſe.

If A. be ſeiſed of Blacke acre in fee, and B. infeoffeth him of White acre vpon condition that A. ſhall not alien Blacke acre, the condition is good, for the condition is annexed to other land, and ouſteth not the Feoffee of his power to alien the land whereof the feoffment is made, and ſo no repugnancy to the ſtate paſſed by the feoffment, and ſo it is of gifts or ſales of chattells reals or perſonalls.

Sect. 361.

¶ Mes ſi le condition ſoit tiel, que le feoffee ne alienera a vn tiel, noſmant ſon noſme, ou

But if the condition be ſuch that the feffee ſhall not alien to ſuch a one, naming his name, or to any of his

¶ If a feoffment in fee bee made vpon condition that the Feoffee ſhall not infeoffe I.S. or any of his heires or iſſues, &c. this is good, for he doth not reſtraine the feoffee of all his power: the reaſon here yelded by our Author

Pl.Com.77.a. 8.H.7.10.b. 21.E.4.47.a.

Author is worthy of obseruation. And in this case if the Feoffee enfeoffe I.N. of entent and purpose that he shall enfeoffe I.S. some hold that this is a breach of the condition, for Quando aliquid prohibetur fieri, directo prohibetur & per obliquum.

a ascun ô ses heyres, ou de issues ô vn tiel, &c. ou huiusmodi les q̃x conditiõs ne tolent tout la power dalienation del feoffee, &c. donq̃ tiel condition est bone.

heires, or of the issues of such a one, &c. or the like, which conditions doe not take away all power of alienation from the feoffee, &c. then such condition is good.

10.H.7.11.Dott.& Stud.134. 13.H.7.23.

If a feoffment bee made vpon condition that the Feoffee shall not alien in Mortmaine, this is good, because such alienation is prohibited by Law, and regularly whatsoeuer is prohibited by the Law, may be prohibited by condition, bee it Malum prohibitum, or malum in se. In ancient deeds of feoffment in fee there was most commonly a clause, Quod licitum sit donatorio rem datam dare vel vendere cui voluerit exceptis viris religiosis & Iudæis.

Brokm,lib.1.fo.13.a.

Section 362.

33.Ass.11.24. Lib.6.40.41. Mildmayes case. 21.H.6.33. 13.H.7.23. 21.H.7.11.

NOte here the double negatiue in legall construction shall not hinder the negatiue, viz. Sub conditione quod ipsi nec hæredes sui non alienarẽt. And therefore the Grammaticall construction is not alwayes in iudgement of Law to be followed.

Vid.Sect.220.acc.

¶ Item, si tenemẽts soient dones en lour tiel condition, que le tenant en le taile ne ses heyres ne alieneront en fee, ne en le taile, ne pur terme dauter vie, forsq̃ pur lour vies demesne, &c. tiel condition est bone. Et la cause est, pur ceo que quant il fist tiel alienation & discontinuance de le taile, il fait le contrarie a lentent le donor, pur que lestatute de W.2. cap.1. fuit fait, per quel estatute les estates en le taile sont ordeines.

ALso if lands bee giuen in taile vpon condition, that the tenant in taile nor his heires shall not alien in fee, nor in taile nor for terme of anothers life but only for their owne liues, &c. such condition is good. And the reason is for that when hee maketh such alienation and discontinuance of the entaile, hee doth contrary to the intent of the donor, for which the statute of *W.2. cap.1.* was made, by which statute the estates in taile are ordained.

¶ *Forsque pur lour vies demesne, &c.* And yet if a man make a gift in taile vpon condition that hee shall not make a Lease for his owne life, albeit the state be lawfull yet the condition is good; because the reuersion is in the Donor. As if a man make a Lease for life or years vpon condition, that they shall not grant ouer their estate or let the land to others, this is good, and yet the grant or Lease should bee lawfull. (*) If a man make a a gift in taile vpon condition that he shall not make a Lease for three liues or 21. yeares according to the Statute of 32.H.8. the condition is good, for the Statute doth giue him power to make such Leases which may be restrained by condition, and by his owne agreement, for this power is not incident to the estate, but giuen to him collaterally by the Act according to that rule of Law, Quilibet potest renunciare iuri pro se introducto.

21.H.6.33. 13.H.7.23.24. 27.H.8.17.19. 31.H.8. Dier 45.

(*) Dier,33.H.8.fo.48.49

¶ *Quant il fist tiel alienation & discontinuance del state taile.* And therefore if a gift in taile be made vpon condition, That the Donee, &c. shall not alien, this condition is good to some intents, and voyd to some: for as to all those alienations which amount to any discontinuance of the state taile, (as Littleton here speaketh) or is against the Statute of Westminster 2. the condition is good without question. But as to a common recouerie the condition is voyd, because this is no discontinuance, but a barre, and this common recovery

Vid.Lib.6.40.41. & Arth. Mildmayes case.

recouerie is not restrained by the said Statute of W. 2. And therefore such a condition is repugnant to the estate taile, for it is to be obserued, that to this estate taile there bee diuers incidents. First, To be diſpunished of waſt. Secondly, That the wife of the Donee in Taile shall be endowed. Thirdly, That the husband of a Feme Donee after Issue shall be Tenaunt by the Curtesie. Fourthly, That Tenant in taile may suffer a common recouerie: and therefore if a man make a gift in Taile, vpon condition to restraine him of any of these incidents, the condition is repugnant and voyd in Law. And it is to be obserued, that a collateral warrantie or a lineall with assets in respect of the recompence, is not restrained by the Statute of Donis conditionalibus, no more is the common recouerie in respect of the intended recompence. And Littleton to the intent to exclude the common Recouerie, saith, Tiel alienation & discontinuance, ioyning them together.

22.E.3.19. 17.E.3.43. Dier.

(*) 13.H.7.24 b.

If a man before the Statute of Donis conditionalibus, had made a gift to a man and to the heires of his bodie, vpon condition, That after Issue hee should not haue power to sell, this condition should haue bæn repugnant and voyd. Pari ratione, after the Statute a man makes a gift in taile; the Law tacite giues him power to suffer a common recouerie, therefore to adde a Condition, That he shall haue no power to suffer a common recouerie, is repugnant and voyd.

If a man make a Feoffement to a Baron and Feme in fee, vpon condition, That they shall not alien, to some intent this is good, and to some intent it is voyd: for to restraine an alienation by Feoffement, or alienation by Deed, it is good, because such an Alienation is tortious and voydable; but to restraine their Alienation by Fine is repugnant and voyd, because it is lawfull and vnauoydable.

10.H.7.11. 13.H.7.23. Lib.6. 41.b. in Sir Anthonie Mildemayes case vbi supra.

It is sayd, That if a man infeoffe an Enfant in Fee, vpon condition, That he shall not alien, this is good to restraine Alienations during his minoritie, but not after his full age.

It is likewise sayd, That a man by Licence may giue Land to a Bishop and his Successors, or to an Abbot and his Successors, and ad a Condition to it, That they shal not without the consent of their Chapter or Couent, alien, because it was intended a Mortmaine; that is, that it should for euer continue in that Sea or house, for that they had it en aurer droit, for religious and good vses.

Doct. & Student 124.

¶ *Le statute de W.2. cap.1.* Hereby it appeareth, That whatsoeuer is prohibited by the intent of any Act of Parliament, may be prohibited by condition, as hath been sayd.

10.H.7.11. Doct. & Stud. 125. 13.H.7.23.

Section 363.

¶ CAr il est proue per les parols compriſes en meſme Leſtatute, que la volūt del donor en tiels cases ſerroit obſerue, et quaunt le Tenant en le Taile fait tiel diſcontinuance, il fait le contrarie a ceo, &c. Et auxy en eſtates en l' taile daſcun Tenements, quant l' reuerſion de fee ſimple, ou remainder en Fee ſimple eſt en auters perſons, quaunt tiel diſcontinuanc̄ ē fait, donques le fee ſimpl̄

FOr it is prooued by the words compriſed in the ſame ſtatute, That the will of the Donor in ſuch caſes ſhall be obſerued, and when the Tenaunt in Taile maketh ſuch diſcontinuance, hee doth contrarie to that, &c. And alſo in eſtates in Taile of any Tenements, when the Reuerſion of the Fee ſimple, or the remainder of the Fee ſimple is in other perſons, when ſuch diſcontinuance is made, thē the fee ſim-

¶ *Quant le remerſion ou rem'en fee eſt en auters perſons.* Put the caſe that a Man make a gift in Taile to A. the remainder to him and to his heires, vpon condition that he ſhall not alien, as to the ſtate taile the condition is good, for ſuch alienation is prohibited, as hath beene ſaid, by the ſayd Statute. But as to the Fee ſimple, ſome ſay it is repugnant and voyd, for the reaſon that Littleton hath yelded: and therefore ſome are of opinion, That this is a good Condition, and ſhall defeat the Alienation for the eſtate taile onely, and leaue the Fee ſimple in the Alienee, for that the Condition did in Law extend onely to the ſtate taile, and not to the remainder.

11.H.7.6. 13.H.7.23.24. Dyer 2. & 3 Phill. & Mar. 127.b.

¶ *Encounter le profit*

fit de ses Issues. Hereby it appeareth, That to restrain tenant in taile from alienation against the profit of his issues, is good, for that agreeth with the will of the Donor, and the intent of the Statute*.

(*) 46.E.3.4.

But a gift in Taile may bee made vpon condition, That Tenant in Taile, &c. may alien for the profit of his issues, and that hath beene holden to be good, and not restrained by the said Stat. and seemeth to agree with the reason of Littleton, because in that case, Voluntas Donatoris obseruetur, &c. and it must be for the profit of the issues.

en le remainder est discontinue. Et pur ceo que l'Tenant en taile ne ferr̄ tiel chose encounter le profit de ses issues ꝛ boñ droit tiel condition est boñ come est auauntdit, &c.

ple in the remainder is discontinued. And because Tenant in Tayle shall doe no such thing against the profit of his issues and good right, such Condition is good, as is aforesayd, &c.

Section 364.

21.H.7.11.

¶ A *Lienont, &c. Et auxy si touts les Issues sont morts, &c.* Note Littleton purposely made parcell of the Condition in the Copulative, that the Tenant in Taile should alien, &c. For if a gift in Taile be made to a man and to the heirs of his bodie, and if he die without heires of his body, that then the Donor and his Heires shall re-enter, this is a voyd Condition, for when the issues faile, the estate determineth by the expresse limitation, and consequently the adding of the condition to defeat that which is determined by the limitation of the estate, is voyd, and in that case the wife of the Donee shall be endowed, &c. And therefore Littleton to make the Condition good, added an alienation, which amounted to a wrong, and he restrained not the Alienation onely, (for then presently vpon the Alienation the Donor, &c. might re-enter and defeat the estate Taile)

¶ Item home poit doner Terres en taile, sur tiel condition, Que si le tenant en le Taile ou ses hr̄es alienont en fee, ou en taile, ou pur terme dauter vie, &c. et auxy que si touts issues veignants del Tenant en le taile soient morts sans issue, que adonques bñ lirroit al donor et a ses heires de enter, &c. Et per tiel voy le droit de le taile poet estre salue apres discontinuanc̄ al issue en le taile, si ascun y soit, issint que per voy dentre del Donor, ou de ses heires le taile ne ſt̄ my defeat per tiel condition: Quære hoc. Et uncore si le Tenant en l taile en ceo case, ou ses heires font ascun discontinuance, celuy en le reuersion ou ses heires, apres ceo que le taile est determine, pur default de issue, &c. poyent enter en

ALso a man may giue lands in Taile vpon such condition, that if the Tenant in Taile or his heires alien in fee or in taile, or for terme of another mans life, &c. and also that if all the Issues comming of the Tenant in Taile, bee dead without Issue, that then it shall be lawfull for the Donor and for his heires to enter, &c. And by this way the right of the taile may bee saued after discontinuance, to the issue in taile, if there bee any: so as by way of entrie of the Donor or of his heires, the taile shal not bee defeated by such conditiō: *Quære hoc.* And yet if the tenant in taile in this Case, or his Heires, make any discontinuance, he in the reuersion, or his Heyres, after that the Taile is determined for default of Issue, &c. may enter into

en le terre per force de meisme le condition, & ne serront my cohert de suer briefe de formdon en le reuerter.

the Land by force of the same Condition, and shall not bee compelled to sue a Writ of Formedon in the reuerter.

but added, and die without issue, to the end that the right of the estate in tayle might bee preserued, and not defeated by the Condition, but might bee recouered againe by the issue in tayle in a Formedon.

And Littleton expressely saith, that the Donor and his heires after the discontinuance, and after that the estate tayle is determined, may re-enter, which is the intention and true meaning of Littleton in this place. And where it is said in this Section (Quære hoc.) this is added by some that vnderstood not this case, and is not in the originall.

Note, that in a Condition consisting of diuers parts in the coniunctiue, as here in the case of Littleton both parts must be performed, according to the old rule, (a) Si plures conditiones ascriptæ fuerunt donationi coniunctim omnibus est parendum & ad veritatem copulatiue requiritur quod vtraque pars sit vera. But otherwise it is when the Condition is in the disiunctiue, for the same Author in that case sayth, Si diuisim cuilibet, vel alteri eorum satis est obtemperare. Et in disiunctiuis sufficit alteram partem esse veram. What then if the Condition or limitation be both in the Coniunctiue and Disiunctiue: as if a man make a Lease to the Husband and wife for the tearme of one and twentie yeares, if the Husband and wife or any Child betweene them so long shall liue, and then the wife dieth without issue, shall the Lease determine, or continue during the life of the Husband? And the answere is, that it shall continue, for the disiunctiue referreth to the whole, and disioyneth not only the latter part as to the Child; but also to the Baron and Fem, so as the sence is, if the Baron, Fem, or any Childe shall so long liue.

(a) Bracton lib.2. fol.19. vide Pl.Com.76. in Wimbishes case. & fo.107. in Palmerstons case. Bracton vbi supra.

So it was adiudged in Communi Banco pasch.30. Eliz. inter Baldwyn & Cocke commonly called Crupponies case.

(b) And so it is if an vse be limited to certaine persons, vntill A. shall come from beyond Sea, and attaine vnto his full age, or die, if he doe come from beyond Sea, or attaine to his full age, the vse doth cease.

(b) Hill.35.Eliz. en trespasse per le Seignior Mordant vers George Vaux so adiudged in the Kings Bench.

Section 365.

¶ ITem, home ne poit pleder en aſcun action, que eſtate fuit fait en fee, ou en fee taile, ou pur terme de vie, ſur condition, ſil ne voucha vn record de ceo, ou monſtra vn eſcript ſouth ſeale, prouant meſme la condition. Car il eſt vn cõmon erudition, que home per plee ne defeatera aſcun eſtate d'frank-tenement per force daſcun tiel condition ſinon que il monſtra le proofe de condition en eſcript, &c. ſi-

ALſo a man cannot plead in any action, that an eſtate was made in fee, or in fee tayle, or for tearme of life vpon Condition, if hee doth not vouch a Record of this, or ſhew a writing vnder Seale, prooving the ſame Condition. For it is a common learning, that a man by plea ſhall not defeat any eſtate of freehold by force of any ſuch Condition, vnleſſe he ſheweth the proofe of the Condition in writing, &c. vnleſſe it bee

¶ EN *aſcun action.* Bee the action reall, perſonall, or mixt, if a Condition be pleaded to defeat a freehold it is regularly true; that a Deed muſt be ſhewed forth (a) in Court. And the reaſon why the deed ſhall bee ſhewed forth to the Court is, for that to euery Deed there be two things requiſite, the one that it be ſufficient in Law, and this is called the Legall Part, and therefore the iudgement of that belongeth to the Iudges of the Law: the other concernes matter of Fact, as ſealing and deliuery, and this belongs to the Iurors. And becauſe euery Deed ought to approue it ſelfe, and be proued by others too; it muſt approue it ſelfe vpon the ſhewing of it forth in Court in two manners.

39.E.3.22. 4.E.4.35.a. 9.E.4.25.b.26.a 6.H.7.8.b. 11.H.7.22.b. 7.H.6.7. 14.H.8.22.b. 28. Aſſ.p.1.

(a) Lib.10.fol.92. Doctor Layfields case. 7.E.3.57.25.E.3.41. 41.E.3.10.acc.

First, as to the compoſition of the words, that it be ſuf-

sufficient in Law, and that the Court shall adiudge.

Secondly, of ancient time if the Deed appeared to bee raled or interlined in places materiall, the Iudges adiudged vpon their view, the Deed to be voyd. But of latter time, the Iudges haue left that to the Iurors to try whether the raling or interlining were before the deliuerie.

45.E.3.21.a. And there is a difference betweene a rent, and a reentrie, for vpon a gift in taile, or lease for life, a rent may bee reserued without Deed, but a Condition with a re-entrie, cannot bee reserued in those cases without deed.

¶ *Escript de south seale.* Which Littleton intendeth to be a Deed vnder Seale.

Lib 5.fol.52.53. the Pages case. 6.R.2.cap.4. And well said Littleton, A Deed vnder Seale, For though the Deed bee inrolled, yet hee cannot plead the inrolment thereof, though it bee of record. And though it be exemplified vnder the great Seale, (b) yet must he shew forth the Deed it selfe vnder Seale as Littleton here saith, and not the exemplification. And so when Littleton wrote, no Constat or inspeximus, of the Kings Letters Patents were auayleable to be shewed forth in Court, but the Letters Patents themselues vnder Seale. For both the Constat and inspeximus are but exemplifications of the inrolment of the Charters, or Letters Patents: and this appeareth by the resolution of two seuerall (c) Parliaments, one holden in the third and fourth yeare of King Edward the first, and the other in the thirteenth yeare of Queene Elizabeth. But now by those Statutes the exemplification or Constat vnder the great Seale of the inrolment of any Letters Patents made since the fourth day of February, Anno 27.H.8. or after to be made, shall be sufficient to be pleaded and shewed forth in Court; aswell against the King, as any other person by the Patentees themselues (whereof there was some doubt (d) conceiued vpon the said Statute of E.6.) and by all and euery other person and persons clayming by from or vnder them. Which Statutes are generall and beneficiall, and especially the Act of 13.Eliz. for that extends not only to Lands, Tenements, and Hereditaments, but to euery other thing whatsoeuer, and ought to be fauourably construed for aduancement of the remedie and right of the subiect.

(b) *Vide* 32.H.8. *in Patents* Br. 12.H.7.12. b.

(c) 3.& 4.E.6.cap.4.& 13.Eliz.cap.6.

(d) Dyer.1.Eliz.167.

The difference betweene a Constat, Inspeximus, and a Vidimus you may reade (e) at large in Pages Case. But none of them by Law ought to be had, but only of the inrolment of record, and not of a Deed or any other writing that is not of Record, and no Deed, &c. can be inrolled, vnlesse it be duly and lawfully acknowledged.

(e) Lib.8.fol.8. in the Princes case. *Vide Pages case vbi supra.*

¶ *Si non que soit en ascun especiall cases, &c.* Hereby is implyed that if a Gardein in Chiualrie in the right of the heire entreth for a Condition broken, he shall plead the state vpon Condition without shewing of any Deed, because his interest is created by the Law. And so it is (f) of a Tenant by Statute Merchant or Staple, or Tenant by Elegit.

33.E.3.gard.162. 20.E.3. dereins pesins.13.35.H.6. tit.monstrans des faits 118.

(f) 20.H.7.5.

Likewise Tenant in Dower shall plead a Condition, &c. without shewing of the Deed. And the reason of these and the like Cases, is for that the Law doth create these estates, and they come not in by him that entred for the Condition broken, so as they might prouide for the shewing of the Deed, but they come to the Land by authoritie of Law, and therefore the Law will allow them to plead the Condition without shewing of it.

5.E.3.37. 11.H.4.83. 35 H.6.tit monstrans des faits 11.b.7.H.6.17.H.5.5. 3.H.6.21. 33.H.6.1. 14.H.8.8.

non que ceo soit en ascuns especiall cases, &c. Mes de chattels reals sicome de leas fait a terme dans, ou de grants de gards fait per gardeins in chiualrie, & huiusmodi, &c. home poit pleder que tiels leases ou grãts fueront faits sur cõdition, &c. sans monstre ascun escript de le condition. Issint en meisme le maner home poit faire de dones & grants de chattels personals & de contracts personals, &c.

in some speciall cases, &c. But of Chattels reals, as of a Lease for yeares, or of grants of Wards made by Gardeins in Chiualrie and such like, &c. a man may plead that such Leases or grants were made vpon Conditon, &c. without shewing any writing of the Condition. So in the same manner a man may doe of gifts and Grants of Chattels Personals, and of Contracts personals, &c.

(f) But the Lord by eſcheat albeit his eſtate be created by Law ſhall not plead a Condition to defeate a freehold without ſhewing of it, becauſe the Deede doth belong vnto him. (f) 35.H.6.vbi ſupra.

A Tenant by the curteſie ſhall not (g) pleads a conditton made by his wife, and a re-entry for the condition broken without ſhewing the Deed, for albeit his eſtate be created by Law, yet the Law preſumeth that he had the poſſeſſion of the Deedes and Euidences belonging to his wife. (g) 35.H.6.vbi ſupra.

(h) But Leſſees for yeares and all others that claime by any Conueyance from the partie ex iuſtifie as ſeruant by Commandement, &c. muſt ſhewe the Deede. (h) 14.H.8.8. Tl.com.149.

(i) R. brought an Eiectione firmæ againſt E. for Ejecting him out of the Mannor of D. which he held for terme of yeares of the demiſe of C. E. the Defendant pleaded that B. gaue the ſaid Mannor to P. and Katherine his wife in tayle who had iſſue E. the Defendant, and after the Doneés infeoffed C. of the Mannor vpon condition that hee ſhould demiſe the Mannor for yeares to R. the Plaintife, the remainder to the husband and to the wife, &c. C. did demiſe the land to R. the Plaintife for yeares but kept the reuerſion to himſelfe, wherefore Katherine after the deceaſe of her husband entred vpon the Plaintife, &c. for the condition broken, and died, after whoſe deceaſe the land diſcended to E. the iſſue in taile, &c now defendant, iudgement if action, exception was taken againſt this plea becauſe E. the Def. maintained his entrie by force of a condition broken, and ſhewed forth no Deed, & the plea was ruled to be good, becauſe the thing was executed, and therefore hee need not ſhew forth the Deed. Nota the Defendant being iſſue in taile was remitted to the eſtate taile. (i) 44.E.3.22. See after this chapter. Section 356.

In a Præcipe quod reddat againſt S. who pleaded that R. was ſeiſed, and infeoffed him in Morgage vpon condition of payment of certaine money at a day, and ſaid that R. paid the money at the day, and entred iudgement of the Writ: exception was taken to this plea for that he ſhewed forth no Deed of the condition, and it was ruled that he need not ſhew forth the Deed for two cauſes. 1. That he ought not to ſhew any Deed to the Demandant becauſe the Demandant is a ſtranger. 2. It might be when R. paid the money, and the condition performed, that the Deed was rebailed to R. and thereupon the plea was adiudged good, and the Writ abated. 11.E.3.vis. Mirr. des iuſt.175. 45.E.3.8.

If land be morgaged vpon condition, and the Morgagee letteth the lands for yeares, reſerving a rent, the condition is performed the Morgagee re-enters, in an action of debt brought for the rent the Leſſee ſhall pleade the condition and the re-entrie without ſhewing forth any Deede. 45.E.3.8.b.Finch.

In an Aſſiſe the Tenant pleades a feoffment of the Anceſtor of the Plaintife vnto him, &c. the Plaintife ſaith that the feoffment was vpon condition, &c. and that the condition was broken, and pleads a re-entrie, and that the Tenant entred and tooke away the Cheſt in which the Deed was and yet detaineth the ſame, the Plaintife ſhall not in this caſe be enforced to ſhew the Deed. 10.H.4 9.b. 43.E.3. Vid.10.E.3.41. Simile in Dower.

If a woman giue lands to a man and his heires by Deede or without generally, ſhe may in pleading auerre the ſame to be Cauſa matrimonij prælocuti, albeit ſhe hath nothing in Writing to proue the ſame, the reaſon whereof ſee Sect.330. 12.E.1. Feoffments & faits.114. F.N.B.205.b. 13.R.2. Monſtrans de fait. 105. 4.E.4 35.&c. 11.H.7.22.b. 6.H.7.8. 9.E.4.25 26. 14.H 8 22.b.

¶ *Mes des chattels realls ſicome leaſe fait a volunt a terme des ans, &c.* This is apparant.

Sect. 366.

¶ Item coment que hõe en aſcun action ne poit pleder vn condition que touche & concerna frank-tenement ſauns monſtrer eſcript de ceo, come eſt auantdit, vncore home poit eſtre aide ſur tiel condition per verdict de xii. hões

ALſo albeit a man cannot in any action plead a condition which toucheth & concernes a freehold without ſhewing writing of this as is aforeſaid, yet a man may be aided vpon ſuch a condition by the verdict of 12. men taken at large in an aſſiſe

¶ *Verdict or verdict de 12. homes.* Veredictum quaſi dictum veritatis, as Iudicium eſt quaſi iuris dictum. Et ſicut ad quæſtionem juris, non reſpondent juratoꝝ, ſed judices: ſic ad queſtionem facti non reſpondent judices ſed juratores. For Jurors are to trie the fact, and the Judges ought to iudge according to the Law that riſeth vpon the fact, *Lib.8.fo.155. Lib.9.fo.13. Lib.11.fo.10.*

fact, for Ex facto Ius oritur.

¶ *Prise alarge.* There be two kindes of verdicts, viz. one generall, and another at large or especiall. As in an Assise of Nouel disseisin brought by A. against B. the Plaintife makes his plaint, Quod B. disseisiuit eũ de 20. acris terræ cum pertinentijs, the Tenant pleades, Quod ipse nullam iniuriam seu disseisinam præfato A. inde fecit, &c. the recognitors of the Assise doe finde Quod prædict. A. iniuste & sine iudicio disseisiuit prædict. B. de prædict. 20. acris terræ cum pertinent. &c. This is a generall verdict. The like law it is if they finde it negatiuely. And Littleton here putteth a case of a Verdict at large or a speciall Verdict, and it is therefore called a speciall Verdict or a Verdict at large, because they finde the speciall matter at large, and leaue the iudgement of Law thereupon to the Court, of which kinde of Verdict it is said, (l) Omnis conclusio bom & veri iudicij sequitur ex bonis & veris premissis & dictis Iuratorum.

(l) *Trin. 33. E. 1. Coram Rege Rott. in Thesaur.*

And though Littleton here putteth his case of a Verdict at large vpon a generall issue (which in the case hee puts it was necessary for the Tenant to pleade) yet when issue is ioyned vpon some speciall point, the Jury, as shall be said hereafter in this Section may finde the speciall matter, if it be doubtfull in Law, for as much doubt may arise vpon one point vpon the speciall issue as vpon the generall issue. And as a speciall verdict may be found in Cõmon

43. *Ass. 31. Stanf. pl. cor. 164. 165. 3. E. 3. Coron. 284. 286. 287. 44. E. 3. 44. 41. E. 3. Coron. 451.*

prise a large en Assise de Nouel disseisin, **ou en ascun auter action, lou les Justices voilent prender le verdict de xij. Jurors alarge. Sicome mittomus q̃ home seisie de certaine terre en fee, lessa mesm̃ la terre a vn auter pur terme de vie sans fait, sur condition d̃ render al lessor vn certeine rent, & pur default de paiment vn re-entrie, &c. per force de quel le lessee est seisie come de franktenemẽt. et puis l'rent est aderere, p̃ que le lessor enter en la t̃re, et puis le lessee arraig̃ vn** Assise de Nouel disseisin, **de la terre enuers le lessor, le quel plede q̃ il fist nul tort, ne nul disseisin, et sur ceo, lassise soit prise, en cest case les Recognitors del assise poyent dire et render a les Justices lour verdict alarge sur tout le matter, come adire que le defendant fuit seisie de la terre en son demesn come de fee, et issint seisie mesme la terre lesse al plaintife pur terme de sa vie, rendãt al lessour tiel annuel rent paiable a tiel feast, &c. sur tiel condition, que si le rent fuit aderere a ascun tiel feast a que doit**

of *Nouel disseisin*, or in any other action where the Iustices will take the verdict of 12. Iurors at large. As put the case, a man seised of certaine land in fee letteth the same land to another for terme of life without deed vpon condition to render to the lessor a certaine rent, and for default of payment, a re-entrie, &c. by force whereof the lessee is seised as of freehold, and after the rent is behinde, by which the lessor entreth into the land, and after the lessee arraigne an Assise of *Nouel Disseisin*, of the land against the lessor, who pleads that he did no wrong nor disseisin, and vpon this, the Assise is taken; in this case the Recognitors of the Assise may say and render to the Iustices their verdict at large vpon the whole matter, as to say that the defendant was seised of the land in his demesne as of fee, and so seised, lette the same land to the plaintife for terme of his life rendring to the lessor such a yearely rent payable at such a feast, &c. vpon such condition that if the rent were behinde at any such feast at which

doit estre pay, doncqs bien lirroit al lessor dentrer, &c. per force d quel lease le plaintife fuit seisie en son demesne come de franktenement, et que puis apres le rent fuit adeere a tiel feast, &c. per que le lessor entra en le terre sur le possession le lessee et prieroit le discretion de les Justices, si ceo soit vn disseisin fait al plaintife ou nemy, donque p ceo que appiert a les Justices, que ceo fuit nul disseisin fait al plaintife entant que lentrie de le lessour fuit congeable sur luy; les Justices doyent doner iudgement q̃ le plaintife ne prendra riens per son briefe dassise. Et issint en tiel cas le lessor serra aide, et vncore nul escripture vnques fuit fait del condition. Car cibien que les Jurors poient auer conusance de le lease, mesmybien il poiẽt auer conusance de le condition que fuit declare & rehearse sur le leas.

it ought to bee paid, then it should bee lawfull for the lessor to enter, &c. by force of which lease the plaintife was seised in his demesne as of freehold, and that afterwards the rent was behinde at such a feast, &c. by which the lessor entred into the land vpon the possession of the lessee, and prayed the discretion of the Iustices if this bee a disseisin done to the plaintife or not. Then for that it appeareth to the Iustices that this was no disseisin to the plaintife, insomuch as the entrie of the lessor was congeable on him; the Iustices ought to giue iudgement that the plaintife shall not take any thing by his writ of Assise. And so in such case the lessor shall bee aided, and yet no writing was euer made of the condition. For aswell as the Iurors may haue conusance of the lease, they also as well may haue conusance of the condition which was declared & rehearsed vpon the lease.

Pleas, so may it also be found in Pleas of the Crowne, or criminall causes that concerne life or member.

A verdict finding matter incertainly or ambiguously is insufficient and no iudgement shall be giuen thereupon, as if an Executor plead Plein. ment administr', and issue is ioyned thereupon, and the Iury finde, that the Defendant haue goods within his hands to bee administred, but finde not to what value, this is incertaine and therefore insufficient.

40.E.3.15. 20 E.3. amendment. 57. 18.E.3.49. 22 Cessauit. 30.E.3.23. 7.H.4.39.

A Verdict that finde part of the issue, and finding nothing for the residue, this is insufficient for the whole, because they haue not tried the whole issue wherewith they are charged. As if an information of intrusion bee brought against one for intruding into a mesuage, and 100. acres of land, vpon the generall issue the Iury finde against the Defendant for the land, but saith nothing for the house, this is insufficient for the whole and so was it twice adiudged. (m) But if the Iury giue a verdict of the whole issue, and of more, &c. that which is more is surplusage, and shall not (a) stay iudgement, for Vtile per inutile non vitiatur, but necessaris incidents required by law the Iury may finde.

17.E.3.47. 18.E.3.48. 22 E.3.1. 18.E.3.56. 15.E.3. Iudgement. 58. 2.H.5.3. 7.H.6.5. 7.E.4.24. 28.H.6.10.

(m) Hill. 25. Eliz. in a writ of Error betweene Brace and the Queene in the Exchequer chamber. Mich. 28 & 29. Eliz. inter Gomersall & Gomersall in account in the Kings bench.

(a) 32.E.3. Cessauit. 25.

If the matter and substance of the issue bee found, it is sufficient as Littleton himselfe sayeth hereafter.

Vid. Sect. 484. 485.

Vid. Sect. 58. 13.E.3. part. 26 15.E.3. Ass. 322. 17.E.3.6. 18. Ass. 2. 35. Ass. 8.

Estoppells which bind the interest of the Land, as the taking of a Lease of a mans owne land by Deed indented, and the like, being specially found by the Iurie, the Court ought to iudge according to the speciall matter, for albeit Estoppels regularly must bee pleaded and relied vpon by an apt conclusion, and the Iurie is sworne ad veritatem dicendam, yet when they find veritatem facti, they pursue well their oath, and the Court ought to adiudge according to Law. (b) So may the Iurie find a warrantie being giuen in euidence, though it be not pleaded, because it bindeth the right, vnlesse it be in a writ of Right, when the Mise is ioyned vpon the meere right.

(b) 1.H.4.6.b. 27 H.8.22.b Pl. Com. 515. Lib.4 fo.53. Rawlins case. & ibid. Pledels case. Hill. 31. Eliz. betweene Sutton and Dunns in the Common place, the case of the Lease for yeares by Deed indented. 34.E.3. Droit. 29.

(c) After

(c) After the verdict recorded, the Jurie cannot varie from it, but before it bee recorded they may varie from the first offer of their verdict, and that verdict which is recorded shall stand: alsso they may varie from a priuie verdict.

(c) 7.R.2. Coron. 108. Plo. Com. Fremans Case 111. 11.H.4.2. 20.Ass.12. 16.Ass.16. 22.Ass.23. 5.H.7. 22.

An issue found by verdict shall alwayes be intended true vntil it be reuersed by attaint, and thereupon vpon the attaint no Supersedeas is grantable by Law.

If the Jurie after their euidence giuen vnto them at the Barre, doe at their owne charges eat or drinke either before or after they be agreed on their verdict, it is finable, but it shall not auoyd the verdict; but if before they be agreed on their verdict, they eat or drinke at the charge of the Plaintife, if the verdict be giuen for him, it shall auoyd the verdict; but if it be giuen for the Defendant, it shall not auoyd it, Et sic è conuerso. (d) But if after they bee agreed on their verdict they eat or drinke at the charge of him for whom they doe passe, it shall not auoyd the verdict.

Pasch.24.H.8. of the Report of Iustice Spilman in the Kings Bench. 11.H.4 17. 35.H.6. Examin. 17. 29.H.8.37. Dier. 35.H.8.55. 4. et 5. Eliz. 218 14.H.7.1. 20.H.7.3. (d) Pasch.6.E.6. in the Common Place

(e) If the Plaintife after euidence giuen, and the Jurie departed from the Barre, or any for him, doe deliuer any Letter from the Plaintife to any of the Jurie concerning the matter in Issue, or any Euidence or any escrow touching the matter in issue, which was not giuen in Euidence, it shall auoyd the verdict, if it be found for the Plaintife, but not if it bee found for the Defendant, & sic è conuerso. But if the Jurie carrie away any writing vnsealed, which was giuen in euidence in open Court, this shall not auoyd their verdict albeit they should not haue carried it with them.

(e) 11.H.4.16.17. 3.Mar Iurors Br.8. Vide Die. vbi supra.

By the Law of England a Jurie after there Euidence giuen vpon the Issue, ought to be kept together in some conuenient place, without meat or drinke, fire or candle, which some Bookes (f) call an imprisonment, and without speech with any, vnlesse it be the Bayliffe, and with him onely if they be agreed. After they be agreed they may in causes betweene partie and partie giue a verdict, and if the Court be risen, giue a priuie verdict before any of the Judges of the Court, and then they may eat and drinke, and the next morning in open Court they may either affirme or alter their priuie verdict, and that which is giuen in Court shall stand. But in criminall cases of life or member the Jurie can giue no priuie verdict, but they must giue it openly in Court. And hereby appeareth another diuision of verdicts, viz. a publiqus verdict openly giuen in Court, and a priuie verdict giuen out of the Court before any of the Judges, as is aforesayd.

Pasch.6.E.6. vbi supra.

(f) 24.E.3.75.

A Jurie sworne and charged in case of life or member, cannot be discharged by the Court or any other, but they ought to giue a verdict. And the King cannot be Non-suit, for he is inuolument of Law euer present in Court: but a common person may be Non-suit.

21.E.3.18.

¶ *En Assise de Nouel disseisin ou en ascun auter action, &c.* Here it is to be obserued, That a speciall verdict, or at large, may be giuen in any Action, and vpon any Issue, be the Issue generall or speciall, and albeit there bee some contrarie opinions in our Bookes, yet the Law is now setled in this poynt.

W.2.cap.30. 7.H.4.11. 8.E.4.29. 9.H.7.13. 23.H.8 tit.Verdit. Br.85. 11.Eliz. Dier 283.284. 3 E.3.Itinere North 284.286 43.Ass 31. 26 H 8.5. 44. E.3.44. F.tit.Cor.n.94. 44.Ass.17. 45.E.3.20. Pl.Com.92. 9.H.7.3. Vide Lit.9.12.13. Downams Case. And see there many other Authorities. 31.Ass.Pl.21. 10.H.4.9.

¶ *Per que le Lessor enter* Here it appeareth that the condition is executed by re-entrie, and yet the Lessor after his re-entrie shall not by the opinion of Littleton, plead the Condition without shewing the Deed, because he was partie and priuie to the condition, for the parties must shew forth the deed, vnlesse it be by the act and wrong of his aduersarie, as hath beene sayd, (m) but an estranger which is not priuie to the Condition, nor claimeth vnder the same, as in the cases aboue sayd appeareth, shall not after the Condition is executed in pleading, be inforced to shew forth the Deed: and by this diuersitie all the Bookes and authorities in Law which seems to be at variance are reconciled. See also for this matter the Section next following.

(m) See more before in this Chapter, Sect.365.

¶ *Les Recognitors del Assise poient dire, &c.* Here it appeareth that the Jurors may find the fact, albeit the Deed be not shewed in euidence, and the rather for that the Condition vpon the Liuerie (as hath beene sayd) is good, albeit there be no Deed at all.

10.Ass p.9. 21.Ass.28. 17.Ass.20. 31.Ass.21. 33.Ass.2. 39.E.28.44.E.3. 22. 10.H.4.9. 7.H.5.5. 9 E.4 26. 18.E.4.12. 15.E.4.16.17. 11.H.7.22.

¶ *Et prieront le discretion des Justices.* That is to say, They (hauing declared the speciall matter) pray the discretion of the Justices, which is as much to say, as That they would discerne what the Law adiudgeth thereupon, whither for the Demandant, or for the Tenant: so as by the authoritie of Littleton, Discretio est discernere per legem, quid sit iustum, that is, to discerne by the right line of Law, and not by the crooked cord of priuate opinion, which the Vulgar call Discretion: Si à jure discedas, Vagus eris, & erunt omnia omnibus incerta; and therefore Commissions that authorize any to proceed. Secundum sanas discretiones vestras is as much to say, as Secundum legem & consuetudinem Angliæ.

Lib.10.fo.4.case de Sewers.

¶ *Car cibien come les Iurors poient auer conusance, &c.* Hereby it appeareth, That they that haue Conusance of any thing, are to haue Conusance also of all Incidents and Dependants thereupon, for an Incident is a thing necessarily depending vpon another.

I

If a Deed be made and dated in a forreine Kingdome, of Lands within England, yet if Liverie and Seisin be made, secundum formam cartæ, the land shall passe, for it passeth by the Liverie. 1.E.3.19. in Grayes case.

Sect.367.

CEM meisme le manner est de feoffement en fee, ou done en le taile sur condition, coment que nul escripture vnque fuit fayt de ceo. Et sicome est dit de verdict a large en Assise, &c. En meisme le manner est en briefe dentr̄ foundue sur disseisin, et en touts autrs actions, ou les Justices voilent prender le v̄dict a large y la ou tiel verdict a large est fait, la manner del entrie entire est mis en lissue, &c.

IN the same manner it is of a Feoffement in Fee, or a Gift in Taile, vpon condition, although no Writing were euer made of it. And as it is sayd of a Verdict at large in an Assise, &c. In the same manner it is of a Writ of Entrie founded vpon a disseisin, & in all other Actions where the Iustices will take the Verdict at large, there where such Verdict at large is made, the manner of the whole entrie is put in the Issue, &c.

CAnd it is to be obserued, That the Court cannot refuse a speciall verdict, if it be pertinent to the matter put in Issue. See the Section next preceding.

C *Verdict alarge.*

It is called a Verdict at large because it findeth the matter at large, and leaues it to the iudgement of the Court: or it is called a speciall Verdict, because it findeth the speciall matter, &c. So as hereby it appeareth, That a Verdict (as hath beene sayd) is two fold, viz. a Verdict at large, or a speciall Verdict, (which is all one) whereof Littleton here speaketh; and a generall Verdict that is generally found according to the Issue, as if the Issue be not guiltie, to find the partie guiltie or not guiltie generally, & sic de cæteris. There is also a Verdict giuen in open Court, and a priuie verdict giuen out of Court before any of the Iudges of the Court, so called because it ought to be kept secret and priuie from each of the parties, before it be affirmed in Court.

See the Section next following

See the next preceding Section

Sect. 368.

CItem en tiel case lou Lenquest poit dire lour verdict a large, sils voilent p̄nd sur eux le Conusance de la ley sur le matter, ils poient dire lour verdict generalment, come est mis en lour charge, cõe en le case auantdit, ils poient bien dire que le Lessor ne disseisa pas le Lessee, sils voilent, &c.

ALso in such case where the Enquest may giue their verdict at large, if they will take vpon them the knowledge of the Law vpon the matter, they may giue their verdict generally as is put in their charge, as in the case aforesaid they may well say, That the lessor did not disseise the Lessee, if they will, &c.

CAlthough the Iurie, if they will take vpon them (as Littleton here saith) the knowlege of the Law, may giue a generall verdict, yet it is dangerous for them so to doe, for if they doe mistake the Law, they runne into the danger of an Attaint, therefore to find the speciall matter is the safest way where the case is doubtfull.

Sect.

Sect. 369.

¶ *Pur ceo que il nad ascũ escripture de ceo.* Hereby it also appeareth, That albeit the Condition was executed by re-entrie, yet the lessor cannot plead it without shewing of a Deed. But of this matter sufficient hath beene sayd before in the two next preceding Sections.

¶ *Quel est bone plea en Barre.* In a case where there haue beene some varietie of opinions in our Bookes, Littleton here cleereth the doubt, and that vpon a good ground. For hee himselfe reporteth in our Bookes, That it was holden by all the Iustices of England, That a lease for life, the reuersion to the Plaintife, was a good barre in an Assise, and also that a Lease for yeares, the reuersion to the Plaintife, might be pleaded in an Assise: and so of a Feoffement in Fee with warrantie. And herein the diuersitie of pleading is to be obserued, for in the case here put by Littleton of a Lease for life, the Tenaunt shall plead it in Barre. But in a case of a Lease for yeares,

18.E.4.10. 12.Ass.38.
10.Ass.16.26.H.6.Barre 9.
38.Ass.20.4. 31.Ass.26.
39.Ass.3. 43.Ass.18.
44.Ass.3. 18.E.3.Ass.77.
31.E.3.ibid.97. 18.Ass.22.

4.Eliz.Dyer 207
8.Eliz.Dyer 246.

¶ Item en meisme le case si l'case fuit tiel, que apres ceo, que le Lessor auoit enter pur default de payment, &c. que le Lessee vst enter sur le lessor et luy disseisist, en cest case si le Lessor arraigne vn Assise enuers l'Lessee, le Lessee luy puit barre de lassise. Car il poit pleader enuers luy ẽ bar, coment le Lessor que est Plaintife fist vn lease al Defendant pur terme de sa vie, sauant le reuersion al Plaintife, quel est bone plea en Barre, entant que il conust l'reuersion estre al Plaintife, en cest case le Plaintife nad ascũ matt̃ de luy ayd̃ forsque le condition fait sur le Leas, et ceo il ne poet pleader pur ceo que il nad ascun escripture de ceo. Et entant que il ne poet responder al barre il serra barre. Et issint en cest case poyes veier que home est disseisie, et vncore il naura Assise. Et vncore si le Lessee soit Plaintife, et le Lessor Defendant il barrera le Lessee per verdict dassise, &c. Mes en cest case lou le Lessee est Defendant, si il ne voil̃ plead le dit plea en Barre, mes plead nul tort, nul disseisin, donqs le lessor recouũa per Assise, Causa qua supr̃.

Also in the same case, if the case were such, That after that, that the Lessor had entred for default of payment, &c. that the Lessee had entred vpon the Lessor, and him disseised; in this case if the Lessor arraigne an Assise against the Lessee, the Lessee may barre him of the Assise: for hee may plead against him in Bar, how the Lessor who is pl̃, made a lease to the def. for term of his life, sauing the Reuersion to the Pl̃, which is a good plea in bar insomuch as hee acknowledges the reuersion to be to the Pl̃. In this case the plaintif hath no matter to ayd himselfe, but the conditiõ made vpon the lease & this he cãnot plead, because he hath not any writing of this: and inasmuch as hee cannot answere the bar he shal be barred. And so in this case you may see that a man is disseised, & yet he shal not haue assise. And yet if the lessee be pl̃ and the lessor def. he shall bar the lessee by verdit of the Assise, &c. but in this case where the Lessee is def. if he wil not plead the said plea in bar, but plead *nul tort, nul diss.* thẽ the lessor shal recouer by assise, *Causa qua supra.*

peares, or of an eſtate of Tenant by Statute or Elegit, the Defendant ſhall not plead in barre, as to ſay, Aſſiſa non, &c. but iuſtifie by force of the Leaſe, &c. and conclude, & iſſint ſans tort. And if the Tenant of the Freehold be not named, he ſhall plead, Nul tenant de franktenement noſme en le breife: and in the caſe of the feoffment with warrantie, hee muſt relie vpon the warrantie.

Section 370.

¶ Item, pur ceo q̄ tielx conditions ſont plus communement mis & eſpecifies en faits endentes, aſcū petit choſe ſerra icy dit (a toy mon fits) de endenture & de fait Poll concernants conditions. Et eſt aſcauoir, que ſi lendenture ſoit bipartite, ou tripartite, ou quadripartite, touts les partes de lendenture ne ſont que vn fait en ley, & cheſcun part de lendenture eſt de auxy grande force et effect, ſicome touts les parts enſemble.

AND for that ſuch Conditions are moſt commonly put and ſpecified in Deeds indented, ſomewhat ſhall bee here ſaid (to thee my ſonne) of an Indenture, and of a Deed Poll concerning Conditions. And it is to bee vnderſtood, that if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture are but one Deed in Law, and euery part of the Indenture is of as great force and effect as all the parts together bee.

¶ *En faits endentes.* Thoſe are called by ſeuerall names, as Scriptū indentatum, carta indenta, Scriptura indentata, Indentura, Literæ indentatæ. An Indenture is a writing containing a Conueyance, Bargaine, Contract, Couenants or agreements betweene two or more, and is indented in the top or ſide anſwerable to another that likewiſe comprehendeth the ſelfe ſame matter, and is called an Indenture, for that it is ſo indented, and is called in Greeke συμγραφον. *Fol. Sect. 217.*

If a Deed beginneth, Hæc Indentura, &c. and in troth the Parchment or Paper is not indented, this is no Indenture, becauſe words cannot make it indented. But if the deed be actually indented, and there is no words of Indenture in the Deed, yet it is an Indenture in Law, for it may bee an Indenture without words, but not by words without indenting. *Lib.5.fol.20. Stiles caſe.*

¶ *En faits indent.* And here it is to be vnderſtood that it ought to bee in Parchment or in Paper. For if a writing bee made vpon a peece of wood, or vpon a peece of Linnen, or in the barke of a tree, or on a ſtone, or the like, &c. and the ſame bee ſealed or deliuered, yet is it no Deed, for a Deed muſt bee written either in Parchment or Paper as before is ſaid, for the writing vpon theſe is leaſt ſubiect to alteration or corruption. *14.E.2.Ley 79. 4.E.2 Fines 116. 4.E.2.Ley 68 2.R.2. Dit 4. 27.H.6.9.F.N.B.122 I.*

¶ *Si lendenture ſoit bipartite, ou tripartite, ou quadripartite, &c.* Bipartite is when there be two parts and two parties to the Deed. Tripartite when there are three parts and three parties, and ſo of Quadripartite, Quinquepartite, &c.

¶ *Et de fait poll.* A deed poll is that which is plaine without any indenting, ſo called, becauſe it is cut euen or polled, euery Deed that is pleaded ſhall be intended to be a Deed poll, vnles it be alleaged to be indented.

¶ *Touts les parts del endenture ne ſont que vn en ley.* If a man by deed indented make a gift in tayle, and the Donee dyeth without iſſue, that part of the Indenture which belonged to the Donee doth now belong to the Donor, for both parts doe make but one Deed in Law. *38.H.6.24.25. 9.H.6.33.35.H.6.34. 9.E.3.18. 9.E.4.18. Pl.Com.134.*

¶ *Et cheſcun part del Indenture eſt de auxy grand force, &c.* This is manifeſt of it ſelfe, and is proued by the Bookes aforeſaid.

It is to be obſerued, that if the Feoffor, Donor, or Leſſor ſeale the part of the Indenture belonging to the Feoffee, &c. the Indenture is good, albeit the Feoffee neuer ſealeth the Counterpart belonging to the Feoffor, &c.

Section 371.

CEt feasance de Indenture eſt en deux maners. Un eſt de faire eux en le tierce perſon. Un auter eſt de faire eux en le prᵉmer perſon. Le feasance en le tierce perſon eſt come en tiel forme.

Hæc Indentura facta inter R. de P. ex vna parte, & V. de D. ex altera parte, Teſtatur, quod prædictus R. de P. dedit & conceſſit, & hac præſenti carta indentata confirmauit præfato. V. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione, &c. In cuius rei teſtimonium partes prædictæ figilla ſua præſentibus alternatim appoſuerunt. *Vel ſic*: in cuius rei teſtimonium vni parti huius Indenturæ penes præfatum V. de D. remanenti, prædict' R. de P. figillum ſuum appoſuit, alteri verò parti eiuſdem Indenturæ penes R. de P. remanenti idem V. de D. figillum ſuum appoſuit. Datum, &c.

Tiel Endenture eſt appel endenture fait en le tierce perſon, pur ceo que les Verbes, &c. ſont en la tierce perſon. Et tiel forme dendentures eſt de pluis ſure feaſance, pur ceo que eſt pluis communement vſe, &c.

AND the making of an Indenture is in two manners. One is to make them in the third perſon. Another is to make them in the firſt perſon. The making in the third perſon is as in this forme.

This Indenture made betweene R. of P. of the one part, and V. of D. of the other part, witneſſeth that the ſaid R. of P. hath granted, and by this preſent Charter indented confirmed to the aforeſaid V. of D. ſuch Land &c. To haue and to hold, &c. vpon Condition, &c. In witneſſe whereof the parties aforeſaid to theſe preſents interchangeably haue put their Seales, Or thus. *In witneſſe whereof to the one part of this Indenture, remayning with the ſaid V. of D. the ſaid. R. of P. hath put his Seale, and to the other part of the ſame Indenture remayning with the ſaid R. of P. the ſaid V. of D. hath put his ſeale. Dated, &c.*

Such an Indenture is called an Indenture made in the third perſon, becauſe the Verbes, &c. are in the third perſon. And this forme of Indentures is the moſt ſure making, becauſe it is moſt commonly vſed, &c.

9.E.3.18. *Vide the Bookes aforerehearſed.*

CEt *le feaſance del Indenture eſt en deux maners, &c.* Here is another of our Authors perfect diuiſions. In this & the next Section following. Littleton doth illuſtrate his meaning by ſetting downe formes and examples which do effectually teach.

Vide 40.E.3.2.7.H.7.14. *Dier* 28.H.8.19 *Lib.* 2. *fol.* 4. & 5. *Godards caſe.*

In theſe two formes there are to bee obſerued (amongſt other) three generall parts of the ſame, viz. the Premiſſes, the Habendum, and the In cuius rei teſtimonium. But hereof hath beene ſpoken at large, Sect 1.4. & 40. for Littleton ſpeaketh not here of the deliuery, but only of the Content or words of the Deed.

C *Pur ceo que eſt le pluis communement vſe.* Here it appeareth that which is moſt commonly vſed in Conueyances is the ſureſt way. A communi obſeruantia non eſt recedendum, & minime mutanda ſunt quæ certam habuerunt interpretationem. Magiſter rerum Vſus. **It is prouided by the Statute of 38.E.3.cap.4. that all penall Words in the third perſon**

17.Eliz. *Dier* 342. 1.R.3. 14.H.6.28. *Eeb.* 12.H.4.12. 30.*Aſſ.*31.

perſon be void and holden for none, wherein ſome of our Bookes (d) ſeeme to differ, but they being rightly vnderſtood, there is no difference at all. For the Statute is to bee intended of Bonds taken in other Courts out of the Realme, and ſo it appeareth by the Preamble of that Act. And it was principally intended of the Courts of Rome, and ſo it appeareth by Iuſtice Hankford in 2.H.4. in which Courts Bonds were taken in the third perſon. So as ſuch Bonds made out of the Realme are void, but other Bonds in the third perſon, are reſolued to be good, as well Indentures in the third perſon, by the opinion of the whole Court in 8.E.4.

(d) 40.E.3.1. 2.H.4.10. 8.E.4.5.

Sect. 372.

CLE feasance de Indenture en le primer perſon eſt come en tiel forme. Omnibus Chriſti fidelibus ad quos præſentes literæ indentatæ peruenerint, A. de B. ſalutem in Domino ſempiternam. Sciatis me dediſſe, conceſſiſſe, & hac præſen' carta mea indentata confirmaſſe C. de D. talem terram, &c. *Vel ſic*: Sciant præſentes & futuri, quod ego A. de B. dedi, conceſſi, & hac præſenti carta mea indentata confirmaui C. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione ſequenti, &c. In cuius rei teſtimonium tam ego prædi' A. de B. quam prædict' C. de D. his Indenturis ſigilla noſtra alternatim appoſuim'. *Vel ſic*: In cuius rei teſtimonium ego præfatus A. vni parti huius Indenturæ ſigillum meum appoſui, alteri verò parti eiuſdem Indenturæ prædict' C. de D. ſigillum ſuum appoſuit, &c.

THe making of an Indenture in the firſt perſon is, as in this forme. *To all Chriſtian people whom theſe preſents indented ſhall come, A. of B. ſends greeting in our Lord God euerlaſting. Know yee mee to haue giuen, granted, and by this my preſent Deed indented, confirmed to C. D. ſuch land, &c.* Or thus: *Know all men preſent and to come that I A. of B. haue giuen, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c. To haue and to hold, &c. vpon Condition following, &c. In witneſſe whereof, aſwell I the ſaid A. of B. as the aforeſaid C. of D. to theſe Indentures haue interchangeably put' our Seales.* Or thus: *In witneſſe whereof I the aforeſaid A. to the one part of this Indenture haue put my Seale, and to the other part of the ſame Indenture, the ſaid C. of D. hath put his Seale, &c.*

HEre Littleton ſets downe three formes of Deeds indented in the firſt perſon, Breuis via per exempla, longa per precepta. It is requiſite for euery Student to get Preſidents and approued formes not only of Deeds according to the example of Littleton, but of Fines, and other Conueyances, and Aſſurances, and ſpecially of good and perfect pleading, and of the right entries and formes of Iudgements which will ſtand him in great ſtead: both while he ſtudie, and after when he ſhall giue counſell. It is a ſafe thing to follow approued Preſidents, for Nihil ſimul inuentum eſt perfectum. *Vide ſect.371.*

Section 373.

CEt il ſemble que tiel endenture que eſt fait en le primer perſon eſt auxy bone en la ley,

AND it ſeemeth that ſuch Indenture which is made in the firſt perſon is as good in law as the

ley, ſicome lendenture fait en le tierce perſon, quant ambideux parties ont a ceo miſe lour ſeals, car ſi ẽ lendenture fait en l' tierce perſon, ou en le prĩmer perſon, mention ſoit fait que le grantor auoit miſe ſolement ſon ſeale, & nemy le grauntee, donques eſt lendenture tantſolement le fait le grauntor. Mes lou mention eſt fait que le grantee ad mis ſon ſeale a lendenture, &c. donques eſt lendenture auxybien le fait le grantee come le fait le grauntor. Iſſint il eſt le fait dambideux, & auxy cheſcun part de lendenture eſt le fait dambideux parties en tiel caſe.

Indenture made in the third perſon, when both parties haue put to this their ſeales, for if in the Indenture made in the third perſon, or in the firſt perſon, mention be made that the grantor only hath put his ſeale, and not the grantee, then is the Indenture only the deed of the grantor. But where mention is made that the grantee hath put to his ſeale to the Indenture, &c. then is the Indenture as well the deed of the grantee as the deed of the grantor. So is it the deed of them both, and alſo each part of the Indenture is the deed of both parties in this caſe.

THere is to be obſerued, that albeit the words in this Indenture be only the words of the Feoffor, yet if the Feoffee put his Seale to the one part of the Indenture, it is the Deed of them both. And in this ſpeciall caſe to make it the Deed of the Feoffe, it appeareth by Littleton, that mention muſt be made in the Deed, that hee hath put to his Seale. for that he is no way made partie to make it, being made in the firſt perſon, but only by the clauſe of putting his Seale thereunto. Otherwiſe it is of a Deed indented in the third perſon as before it appeareth, for there he is made partie to the Deed in the beginning. And Littletons rule is true, that euery part of an Indenture is the Deede of both parties, for as it hath beene ſaid both parts make but one Deed in Law in that caſe.

Sect.374.

CSur certaine condition, &c.

Here by this (&c.) is implied, that the condition in this caſe doth extend both to the eſtate for life, & to the remainder, but by ſpeciall limitation it may extend to euery one of them, and not to the other. And albeit he in the remainder be no partie to the Indenture (the parties thereunto only being the Lellor and the Tenant for life) yet when hee in the remainder entreth and agreeth to haue the lands by force of the Indenture, hee is bound to performe the conditions contained in the In-

CItem ſi eſtate ſoit fait p Indenture a vn home pur terme de ſa vie, le remainder a vn auter en fee ſur certaine condition, &c. & ſi le tenant a terme d vie auoit mis ſon ſeale al part de lendenture, & puis morust, & il que eſt en le remainder ent en la terre, per force de ſon remainder, &c. en ceſt cas il eſt tenus de performer touts les conditiõs compriſe en lenden-

ALſo if an eſtate bee made by Indenture to one for terme of his life, the remainder to another in fee vpon a certaine condition, &c. and if the tenant for life haue put his ſeale to the part of the Indenture, and after dieth, and he in the remainder entreth into the land by force of his remainder, &c. In this caſe hee is tied to performe all the conditions compriſed

lendenture, ſicome le tenant a terme de vie, deuoit faire en ſa vie, & vncore ceſtuy en le remainder ne vnqes enſeale alcun part del endenture. Mes la cauſe eſt, que entant que il enter et agreea dauer les terres per force del endenture, il eſt tenus de performer les conditions deins meſme lendenture ſil voile auer la terre, &c.

in the Indenture, as the tenant for life ought to haue done in his life time, and yet hee in the remainder neuer ſealed any part of the Indenture. But the cauſe is, for that inaſmuch as hee entred and agreed to haue the lãds, by force of the Indenture hee is bound to performe the conditions within the ſame Indenture if hee will haue the land, &c.

denture. And here is alſo a diuerſitie to be vnderſtood that any ſtranger to the Indenture may take by way of remainder, but he cannot in this caſe take any preſent eſtate in poſſeſſion, becauſe he is an ſtranger to the Deede.

If A. by Deed indented betweene him and B. ietteth lands to B. for life, the remainder to C. in fee reſeruing a rent, Tenant for life dieth, he in the remainder entreth into the lands, he ſhall bee bound to pay the rent, for the cauſe and reaſon before yeelded by Littleton. An Indenture of Leaſe is ingroſſed betweene A. of the one part; and D. and R. of the other part, which purporteth a demiſe for yeares by A. to D. and R. A. ſealeth and deliuereth the Indenture to D. and D. ſealeth the Counterpane to A. But R. did not ſeale and deliuer it. And by the ſame indenture it is mentioned, that D. and R did grant to be bound to the Plaintife in 20. pound in caſe that certaine conditions compriſed in the Indenture were not performed. And for this 20. pound A. brought an Action againſt D. only, and ſhewed forth the Indenture. The Defendant pleaded, that it is proued by the Indenture that the demiſe by indenture was made to D. and R. which R. is in full life and not named in the writ, Iudgement of the writ. The Plaintife replyed that R. did neuer ſeale & deliuer the Indenture, & ſo his writ was good againſt D. ſole. And there the counſell of the Plaintife tooke a diuerſity betweene a rent reſerued which is parcell of the Leaſe, and the land charged therewith, and a ſumme in groſſe, as here the 20. pound is, for as to the rent they agreed that by the agreement of R. to the Leaſe, he was bound to pay it, but for the 20. pound that is a ſumme in groſſe and collaterall to the Leaſe, and not annexed to the land, and groweth due only by the Deed, and therefore R. ſaid they was not chargeable therewith for that he had not ſealed and deliuered the Deed. But in aſmuch as he had agreed to the Leaſe which was made by Indenture he was chargeable by the Indenture for the ſame ſumme in groſſe, and for that R. was not named in the writ, it was adiudged that the writ did abate.

50.E.3.22. 3.H.6.26.b.

38.E.3.8.a. 3.H.6.26.b. *Vide* 45.E.3.11.12.

¶ *Auer la terre, &c.* Here is implyed an ancient maxime of the Law, viz. Qui ſentit commodum ſentire debet & onus, Et tranſit terra cum onere.

Section 375.

¶ Item ſi feoffment ſoit fait p fait Poll ſur condition, & pur ceo que le condition neſt pas performe, le feoffor entra & happa la poſſeſſion de le fait Poll, ſi le feoffee port vn action de cel entrie enuers le feoffor, il ad eſte queſtion ſi le feoffor poit pleder le condition per le dit fait Poll encounter le feoffee. Et aſcuns ont dit que non, entant que il ſemble

ALſo if a feoffment bee made by deed Poll vpon condition, and for that the condition is not performed, the feoffor entreth and getteth the poſſeſſion of the deed Poll, if the feoffee brings an action for this entrie againſt the feoffor, it hath beene a queſtion if the feoffor may plead the condition by the ſaid deed Poll againſt the feoffee. And ſome haue ſaid

ſemble a eux que vn fait Poll, & le propertie de meſme le fait appertient a celuy a que le fait eſt fait, & nemy a celuy que fiſt le fait. Et entant que tiel fait ne attient al feoffor, il ſemble a eux que il ne poit pas ceo pleder. Et auters ont dit le contrarie, et ont monſtre diuers cauſes. Un eſt, ſi le caſe fuit tiel, que en action perenter eux, ſi le feoffee pleder meſme le fait et monſtre eſt al Court, en ceſt cas entant que le fait eſt en Court, le feoffor poit monſtrer al court coment en le fait ſont diuers conditions deſtre perfoymes de le part le feoffee, &c, et pur ceo que ils ne fueront perfoymes, il enter, &c. et a ceo il ſerra reſceiue, per ñ le reaſon quant le feoffor ad le fait en poigne, et ceo monſtra a le court, il ſerra bien reſceiue de ceo pleder, &c. et noſment quant le feoffor eſt priuie al fait, car couient eſtre priuie al fait quant il fiſt le fait, &c.

hee cannot, inaſmuch as it ſeemes vnto them that a deed Poll and the property of the ſame deed belongeth to him to whom the deed is made, and not to him which maketh the deed. And inaſmuch as ſuch a deed doth not appertaine to the feoffor. It ſeemes vnto them that he cannot plead it. And others haue ſaid the contrary, and haue ſhewed diuers reaſon, one is, if the caſe were ſuch that in an action betweene them if the feoffee plead the ſame deed and ſhew it to the Court, in this caſe inſomuch as the deed is in Court, the feoffor may ſhew to the Court how in the deed there are diuers conditions to be performed of the part of the feoffee, &c. and becauſe they were not performed, he entred, &c. and to this he ſhall be receiued. By the ſame reaſon when the feoffor hath the deed in hand, and ſhew this to the court, he ſhall well be receiued to plead it, &c. and namely when the feoffor is priuy to the fait, for he muſt bee priuie to the deed when he makes the deed, &c.

(a) Vid. Sect. 170. 302. 340.

HEre the latter opinion is cleare Law at this day, and is Littletons owne opinion (a) as before hath beene obſerued.

¶ *Ont monſtre diuers cauſes.*

Fœlix qui potuit rerum cognoſcere cauſas,
Et ratio melior ſemper prævalet.

24. E. 3. 73. 45. E. 3. Monſtrans des faits. 55. (b) 40. Aſſ. 34. lib. 5. 75. b. Wymarks caſe. (c) 12. H. 4. 8. 42. E. 3. 27. Wymarks caſe, vbi ſupra. 38. H. 6. 2. 41. Aſſ. 29. 12. H. 4. 8. 7. H. 4. 39. 11. H. 4. 73. 45. E. 3. 11. P. N. B. 243.

¶ *Entant que le fait eſt en Court, &c.* And herewith do agree (b) many Authorities in Law. (c) And if the Deed remaine in one Court, it may be pleaded in another Court without ſhewing forth; Qui lex non cogit ad impoſſibilia.

¶ *De part le feoffee, &c.* Here alſo is implyed if the condition bee to be performed on the part of the Feoffor or by a ſtranger, and it is to be vnderſtood that when a Deed is ſhewed forth to the Court the Deed ſhall remaine in Court all that tearme in the cuſtody of the Cuſtos brevium, but at the end of the Tearme (if the Deed be not denied) then the Law adiudgeth the Deed in the cuſtody of the partie to whom it belongeth, for a mans euidences are as it were the ſinewes of his land. But if the Deed be denied, then the Deed in iudgement of Law remaineth in court vntill the plea be determined. The reſidue of this Section needeth no explication.

Sect.

Sect. 376.

¶ Auxy ſi deux homes ſont vn treſpas a vn auter, le quel releaſe a vn d eux per ſon fait touts actions perſonals, nient obſtant il ſuiſt action d treſpaſſe enuers lauter, le defendant bien poit monſtrer que le treſpaſſe fuit fait per luy et per vn auter ſon companion, et que le Plaintife per ſon fait q̄ il monſtre auant releſſa a ſon companion touts actions perſonals iudgemēt ſi action, &c. Et vncore tiel fait appertient a ſon companion, et nemy a luy, mes pur ceo que il poit auer aduantage p le fait ſi poit monſtrer le fait al Court, il poit ceo bien pleder, &c. Per meſme le reaſon poit le feoffor en lauter cas quant il doit auer aduantage per le condition compris deins le fait Poll.

ALſo if two men doe a treſpaſſe to another, who releaſe to one of them by his deed all actions perſonalls, and notwithſtanding ſueth an action of treſpaſſe againſt the other, the defendāt may well ſhew that the treſpaſſe was done by him and by an other his fellow, and that the Plaintife by his deed (which he ſheweth forth) releaſed to his fellow all actions perſonalls, and demand the iudgement, &c. and yet ſuch deed belongeth to his fellow and not to him, but becauſe hee may haue aduantage by the deed if hee will ſhew the deed to the Court, hee may well plead this, &c. by the ſame reaſon may the feoffor in the other caſe when he ought to haue aduantage by the condition compriſed within the deed Poll.

¶ *Si deux homes ſont vn treſpaſſe a vn auter, &c.* Here by this Section it is to bee vnderſtood that when diuers doe a treſpaſſe, the ſame is Ioynt or Seuerall at the will of him to whom the wrong is done, yet if he releaſe to one of them; all are diſcharged, becauſe his owne Deed ſhall be taken moſt ſtrongly againſt himſelfe, but otherwiſe it is in caſe of appeale of death, &c. as if two men be ioyntly and ſeuerally bounden in an Obligation, if the Obligee releaſe to one of them; both are diſcharged, and ſaying the Treſpaſſers are parties and priuies in wrong, the one ſhall not plead a Releaſe to the other without ſhewing of it forth, albeit the Deeds appertaine to the other.

27.E.3 83. 13.E.4.2. 15.E.4.26. 21.E.4.72. 22.E.4.7. 8.H.6 13. 20.H.6.41. 21.H.6. *Arbitrement*, 41. 2.R.3.9.a. 14.H.8.10. 34.H.8.tit. *Eſtrang. al fait* 21 3.H.6.18.26.

If an action of debt vpon an Obligation be brought againſt an heire, he may pleade in barre a Releaſe made by the Obligee to the Executors. But albeit the Deed belong to another, yet muſt he ſhew it forth, for both of them are priuie to the Teſtator.

13.E.2.tit. *Monſtrans de faits*, 2.

¶ *Per meſme le reaſon.* Vbi eadem Ratio, ibi idem Ius.

Sect. 377.

¶ Auxy ſi le feoffee donaſt ou grātaſt le fait Poll al feoffor, tiel grant ſerra bone, et donques le fait et le propertie del

ALſo if the feoffee granteth the deed to the feoffor, ſuch grant ſhall bee good, and then the deed and the propertie therof belongeth

¶ *Le property del fait appertient al feoffor.* Hereby it appeareth that a man may giue or grant his Deed to another, and ſuch a grant by Paroll is good. And

And it is also implied, That if a man hath an Obligation, though he cannot graunt the thing in Action, yet hee may giue or grant the Deed, viz. the Parchment and Wax to another, who may cancell and vse the same at his pleasure.

¶ *Serra plus toſt entend que il vient al fait per loyall meane, que per tortious meane.* Omnia præsumuntur legitimè facta, donec probetur in contrarium. Iniuria non præsumitur.

¶ Quære de dubijs. There be three kind of vnhappie men.

1 Qui scit & non docet, Hee that hath knowledge and teacheth not.

2 Qui docet & non viuit, Hee that teacheth and liueth not thereafter.

3 Qui nescit, & non interrogat, He that knoweth not, and doth not enquire to vnderstand. Therefore Littleton saith, Quære de dubijs.

fait appertient al Feoffor, &c. Et qñt le Feoffor ad le Fait en poigne, et est plead al Court, il ſra plus toſt entendue que il vient al Fait per loyal meane, que per tortious meane. Et ſſint a eux ſemble que le Feoffor poet bien pleader tiel fait polle que compzent condition, &c. ſil ad le fait en poigne. Ideo semper quære de dubijs, quia per rationes peruenitur ad legitimam rationem &c.

to the Feoffor, &c. and when the Feoffor hath the deed in hand, and is pleaded to the Court, it shall be rather intended, That he commeth to the Deed by lawfull meanes, than by a wrongfull mean: & so it seemeth vnto them, That the feoffor may well plead such deed poll which compriseth the condition, &c. if he hath the same in hand. *Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legitimam rationem &c.*

Infœlix cuius nulli sapientia prodest.
Infœlix qui recta docet, cum viuit inique.
Infœlix qui pauca sapit spernitque doceri.

¶ Quia per rationes peruenitur ad legitimam rationem. For Ratio is Radius diuini Luminis, And by reasoning and debating of graue learned men the darkes of ignorance is expelled, and by the light of legall Reason the Right is discerned, and thereupon Iudgement giuen according to Law, which is the perfection of Reason. This is of Littleton here called Legitima ratio, whereunto no man can attaine but by long studie, often conference, long experience, and continuall obseruation.

Certaine it is, That in matters of difficultie the more seriously they are debated and argued, the more truly they are resolued, and thereby new inuentions iustly auoyded.

Inter cuncta leges & perconctabere doctos.

Section 378.

¶ *Condition en Ley, &c.* Littleton hauing spoken of Conditions in Deed, now according to his owne diuision commeth to speake of Conditions in law.

¶ *Que ne ſoit ſpecifie en Eſcript.* A Condition in Law is that which the Law intendeth or implieth without expresse words in the Deed.

¶ **Estates que homes ont ſur condition en ley ſont tiels eſtates que ont vn condition per la ley a eux annex, coũt que ne ſoit ſpecifie en eſcript. Si come hõe grant per ſon fait a vn auter loffice de Par-**

States which men haue vpon Condition in Law, are such Estates which haue a Condition by the law to them annexed, albeit that it bee not specified in writing. As if a man graunt by his Deed to another the

parkershyp de vn park a aũ ꝛ occupier meſme loffice pur terme de ſon vie, leſtate que il ad en loffice eſt ſur condition en ley, ceſtaſcauoir, que le parker bien ꝛ loyalment gardera le park. ꝛ ferra ceo q̃ a tiel office appertiẽt a faire. ou autrement bien lirroit al graunt or ꝛ a ſes heires de luy ouſte, ꝛ de grant ċ a vn auter ſil voit, ꝛc. Et tiel condition que eſt entendus per la ley eſtre annexe a aſcun choſe, eſt auxy fort ſicome la condition fuiſſoit mis en eſcript.

the office of Parkerſhip of a Parke, to haue and occupie the ſame office for terme of his life, the eſtate which he hath in the office is vpon Condition in Law, to wit, that the Parker ſhall well and lawfully keepe the Parke, and ſhall doe that which to ſuch office belongeth to doe, or otherwiſe it ſhal be lawful to the grãtor, & his heires to ouſt him, and to grant it to another if hee will, &c. And ſuch Condition as is intended by the Law to be annexed to any thing, is as ſtrong as if the Condition were put in writing.

¶ *Que le Parker bien & loyalment garde. rale Parke, &c.* Parke, this ſhould be written Parque which is a French word, and ſignifieth that which we vulgarly call a Parke of the French Verbe Parquer, to inparke, to incloſe. It is called in Domeſday Parcus. In law it ſignifieth a great quantitie of ground incloſed, priuiledged for wild beaſts of chaſe by preſcription, or by the Kings grant.

The beaſts of Parque, or Chaſe properly extend to the Bucke, the Doe, the Fore, the Patron, the Roe, but in a common and legall ſence, to all the beaſts of the Forreſt. There bee both Beaſts and Foules of the warren. Beaſts, as Hares, Conies, and Rocs called in Records (d) Capreoli. Fowles of twofolds, viz. Terreſtres and Aquatiles, Terreſtres of two ſorts. Silueſtres and Campeſtres: Campeſtres as Partridge, Quaile, Raile, ꝛc. Silueſtres, as Pheſant, Woodcocke, ꝛc. Aquatiles, as Mallard, Heron, ꝛc. whereof I haue ſeen this Record. (*) Rex conceſſit Iohanni de Beuerly Armigero ſuo quod ipſe cum quibuſcunque canibus ſuis ad quaſcunque beſtias, feras Regis in quibuſcunque foreſtis, parcis ſuis quotieſcunque voluerit venari poſſit, & quoſcunque Falcones poſſit permittere volare ad quaſcunque aues de Warrena in quibuſcunque riparijs, &c.

(d) *Hil.13.E.3. coram Rege in Theſaur.*

(*) *38.E.3.rot. patent. part 1.m.10.*

It is reſolued (e) by the Iuſtices and the Kings Councell, that Capreoli id eſt, Roes, non ſunt beſtia de foreſta, eo quod fugant alias feras. Beaſts of Foreſts, be properly Hart, Hind, Bucke, Hare, Boare and Woolfe, but legally all wild beaſts of Venery.

(e) *Hil.13.E.3. coram Rege in Theſaur.*

A Foreſt and Chaſe are not, but a Parke muſt bee incloſed. The Forreſt and Chaſe doe differ in Offices and Lawes: euery Foreſt is a Chaſe, but euery Chaſe is not a Foreſt. A ſubiect may haue a Forreſt by eſpeciall grant of the King, as the Duke of Lancaſter, and the Abbot of Whitbie had.

Vid. Sect.1.

Ockam cap. quid Regis Foreſta ſaith, Foreſta eſt tuta ferarum manſio non quarumlibet, ſed ſilueſtrium, non quibuſlibet in locis, ſed certis, & adhoc idoneis, vnde Foreſta E mutata in O. quaſi fereſta, hoc eſt, ferarum ſtatio.

Vide Bract fol.221.& 316. Britton fol.34. Fleta lib 2. cap.34.35.

Pudzeld or Woodgeld is to be free from payment of money for taking of wood in any Forreſt. But let vs now returne to our Littleton.

In this Section Littleton putteth an example of a Condition in Law annexed to the office of the Keeper of a Parke, but this example muſt bee vnderſtood with a diſtinction, for if the Parker doth not attend on the Parke one or two, ꝛc. dayes, this is no forfeiture of the Office of Parkerſhip, but if in his default any Deere be killed, and ſo a dammage to the Lord, that is a forfeiture; for (that it may be ſaid once for all) non-vſer of it ſelfe without ſome ſpeciall dammage is no forfeiture of priuate Offices, but non-vſer of publique Offices which concerne the adminiſtration of Iuſtice, or the Common wealth, is of it ſelfe a cauſe of forfeiture.

5.E.4.15.b.L.5.E.4.26.Pl. Com.379.380.

2.H.7.11. 39.H.6.32.&c.

¶ *Luy ouſter ſil voit, &c.* Littleton here ſpeaketh of an Ouſter by force of a Condition in Law, therefore it is to bee ſeene in what other caſes the Grantor may lawfully ouſt his Officer.

There is a diuerſitie betweene Officers that haue no other profit, but a Collaterall certaine fee, for there the Grantor may diſcharge him of his ſeruice, as to be a Bayly, Receiuer, Surneyor,

18.E.4.8.31.H.8.grants. Br.134 34 H.8.ibid.93.11. Eliz. Dier.281.

uepor, Auditor, or the like, the exercise whereof is but labour and charge to him, but hee must haue his fee: for the maine rule of Law is, That no man can frustrate or derogate from his owne grant to the prejudice of the Grantee. And where albeit the Grantee hath no other profit but his fee, yet that fee is to bee perceiued and taken out of the profits appertayning to the Lord within his Office, for there the Grantor cannot discharge him of his seruice or attendance, for that may turne to the prejudice of the Grantee, if the Grantor will not grant the Office at all. But in all cases where the Officer relinquisheth his Office, and refuseth to attend, he loseth his Office, Fee, Profit and all.

22.H.6.12.3.6.E.6.Dier 71.

There is another diuersitie where the Grantee besides his certaine fee hath profits and auayles by reason of his Office, there the Grantor cannot discharge him of his seruice or attendance, for that should be to the prejudice of the Grantee. As if a man doth grant to another the Office of the Stewardship of his Courts of his Mannors with a certaine fee, the Grantor cannot discharge him of his seruice and attendance, because he hath other profits and fees belonging to his Office, which he should lose, if he were discharged of his Office. And as in the case which Littleton here putteth of the Office of the Keeper of a Parke, for that her hath not only his fee certaine, but profits and auayles also, in respect of his office, as Deere Skinnes, Shoulders, &c. But now let vs proceed and see what other particular forfeitures in Law bee of this Office here spoken of by Littleton, and somewhat of Conditions in Law in generall.

15.E.4.3.l.5.E.4.26. 28.H.8.Bendloes enter Exeq̃ de Londres & Hieron. lib.9. f.l.50.95.96.99.

And it is to be vnderstood, that if any Keeper kill any Deere without warrant, or fell or cut any Trees, Woods, or Underwoods, and conuert them to his owne vse, it is a forfeiture of his Office, for the destruction of vert is, by a meane, destruction of Venison. So it is if he pul down the lodge or any house within the Park for putting of Hay into it for feeding of the Deere or such like, it is a forfeiture, and the reason wherefore the Office in these and in like cases shall be forfeited (f) is quia in quo quis delinquit in eo de iure est puniendus.

(f) Mich.23.E.1. coram Rege in Thesaur. Leuesque de Dunbarns case.

As to Conditions in Law, you shall vnderstand they bee of two Natures, that is to say, by the Common Law, and by Statute. And those by the Common Law are of two Natures, that is to say, the one is founded vpon Skill and Confidence, the other without Skill or Confidence: Vpon Skil and Confidence, as here the Office of Parkership, and other Offices in the next Section mentioned, and the like.

Pl.Com.379.a. Sir Henrie Nevils case. 21 E.4.20.93.

Touching Conditions in Law without Skill, &c. some bee by the Common Law, and some by the Statute. By the Common Law, as to euery estate of Tenant by the Courtesie, Tenant in Taple after possibilitie of issue extinct, Tenant in Dower, Tenant for Life, Tenant for Yeares, Tenant by Statute Merchant, or Staple, Tenant by Elegit, Gardein, &c. there is a Condition in Law secretly annexed to their Estates, that if they alien in fee, &c. that he in the reuersion or remainder may enter, and sic de similibus, or if they clayme a greater Estate in Court of Record, and the like.

Lib.8.fol.44. Wittinghams case.

Concerning Conditions in Law founded vpon Statutes, for some of them an entrie is giuen, and for some other a recouery by action: Where an entrie is giuen, as vpon an alienation in Mortmaine, &c. and the like. Where an action is giuen, as for waste against Tenant for life and yeares, and the like.

¶ *Et tiel Condition que est entendue per la ley estre annex a ascun choses auzi fort, &c.* Here it is worthy the obseruation to take a view of the diuisions aforesaid in some particular case. As for example. Admit that an Office of Parkership be granted or discend to an Infant or Feme Couert, if the Conditions in Law annexed to this Office which require Skill and Confidence bee not obserued and fulfilled, the Office is lost for euer, because as Littleton saith, here it is as strong as an expresse Condition. But if a Lease for life be made to a Feme Couert, or an Infant, and they by Charter of feoffment alien in fee, the breach of this Condition in Law, that is without Skill, &c. is no absolute forfeiture of their estate. So of a Condition in Law giuen by Statute, which giueth an Entrie only. As if an Infant or a Feme Couert with her husband aliens by Charter of feoffment in Mortmaine, this is no barre to the Infant, or Feme Couert. But if a recouery be had against an Infant or Feme couert in an Action of waste, there they are bound and barred for euer.

And it is to be obserued, that a Condition in Law by force of a Statute which giueth a recouery is in some case more strong then a Condition in Law without a recouery. For if Lesse for life make a Lease for yeares, and after enter into the land, and make waste, and the Lesser recouer in an Action of waste, he shall auoid the Lease made before the waste done. But if the Lessee for life make a Lease for yeares, and after enter vpon him, and make a feoffment in fee this forfeiture shall not auoid the Lease for yeares. Nor in any of the said cases a precedent Rent granted out of the Land shall be auoyded. For if Lesse for life grant a Rent charge and after doth waste, and the Lessor recouereth in an Action of waste, he shall hold the Land charged

ged during the life of the Tenant for life, but if the rent were granted after the waste done, the Lessor shall auoid it.

And the reason wherefore the Lease for yeares in the case aforesaid, shall be auoyded, is because of necessitie the Action of waste must be brought against the Lessee for life, which in that case must bind the Lesse for yeares, or else by the Act of the Lessee for life the Lessor should be barred to recouer Locum vastatum, which the Statute giueth.

If a man hath an Office for life which requireth Skill and confidence, to which Office he hath a house belonging, and chargeth the house with a Rent during his life, and after commit a forfeiture of his Office, the Rent charge shall not be auoyded during his life, for regularly a man that taketh aduantage of a Condition in Law shall take the Land with such charge as he finds it. And therefore Littleton is here to be vnderstood, that a Condition in Law is as strong as a condition in deed, as to avoide the estate or interest it selfe, but not to auoide precedent charges, but in some particular cases as by that which hath beene said appeareth.

There be at this day more conditions in Law annexed to offices then were when Littleton wrote; for example, for offices in any wise touching the administration or execution of Iustice, or Clerkship in any Court of Record, or concerning the Kings Treasure, Reuenue, Recount, Customes, Vnage, Auditorship, Kings Surueyor, or keeping of any of his Maiesties Castles, Forts, &c. For if any of these officers bargaine or sell any of the said offices or any Deputation of the same, or take any money or profit, or any promise, couenant, bond or assurance, to haue any money or reward for the same, the person so bargaining or selling, or that shall take any such promise, couenant, bond or assurance shall not only forfeit his estate, but also euery person so buying, giuing or assuring be adiudged a disabled person to haue or enioy the same office or offices, deputation or deputations, &c. And that all such bargaines, sales, promises, couenants and assurances, as be before specified, shall be voide, except as in the said Act is excepted.

3.H.7.ca.12. Auditor, Receiuer, Bailife, Keeper of a Castle, Master of the game Keeper or Parker of any Forest, Parke, house &c. 7.E.6.ca.1. Treasurer, Receiuer Collector, Bailife, &c. 5.E.6.ca.16.

Sir Robert Vernon Knight being Coferer of the Kings house of the Kings gift, and hauing the receit of a great summe of money yearely of the Kings Reuenue, did for a certaine summe of money bargaine and sell the same to Sir A.I. and agreed to surrender the said office to the King, to the entent a grant might be made to Sir A. who surrendred it accordingly: and thereupon Sir A. was by the Kings appointment admitted and sworne Coferer. And it was resolued by Sir Thomas Egerton Lord Chancellor, then chiefe Iustice and others to whom the King referred the same, that the said office was voyde by the said Statute, and that Sir A. was disabled to haue or take the said office, and that no Non obstante could dispence with this act to enable the said Sir A. for the reason and cause before-mentioned, Sect. 80. And hereupon Sir A. was remoued, and Sir Marmaduke Dariell sworne (by the Kings commandement) in his place. And note that all promises, bonds and assurances aswell on the part of the bargainer, as of the bargainee are voyde by the said act. (*) Nulla alia re magis Romana respublica interiit, quam quod magistratus officio venalia erant.

Mich.13.Iacobi Regis.

Lib.3.fo.83. Colfeilds case.

* Acrod fo.353.

(g) Iugurthum going from Rome, said to the Citie, Vade venalis ciuitas, mox peritura si emptorem inuenias.

(g) Salust.

Therefore by the Law of England it is further prouided that no Officer or Minister of the King shall be ordained or made for any gift or bribage, fauour or affection, nor that any which pursueth by him or any other, priuily or openly to be in any manner of office, shall bee put in the same office or in any other, but that all such officers shall be made of the best and most lawfull men and sufficient. A Law worthy to be written in letters of gold, but more worthy to be put in due execution. For example, neuer shall Iustice be duly administred, but when the Officers and ministers of Iustice be of such quality, and come to their places in such manner as by this law is required.

12.R.2.ca.2.

¶ *Tiel condition que est entendus per la ley estre annex a ascun chose, est auxi fort sicome la condition fuit mise in escript.* And this accords with that ancient rule; Vtiquè fortior & potentior est dispositio legis quam hominis.

Vid.Sect.419.429.430.

Sect. 379.

¶ Item manr maner est de grants de offices de Seneschall, Constabular, Bedelary, Bailiwick, ou auts

IN this manner it is of grants of the offices of Steward, Constable, Bedelarie, Bayliwick, or other offices, &c. But if

¶ *Seneschall.* Of this I haue spoken before.

21.E.4.20. Pl.Com.379.

¶ *Constabularie.* of this likewise something hath beene spoken before.

8.E.4.6

before. But a Constable is often taken in the law for a warden or keeper, as Constabularius castri de Douer & 5. portuum; for the warden of the Castle of Douer and the Cinque ports, &c. So as in this sence Constabularius is taken for Castellanus, and this is proued by the Statute (*) of W.1.ca.7. Des prises des Constables ou Castellains faitz des auters, &c. And Magna Carta cap. 19. nullus constabularius vel ejus balivus capiat blada vel alia catalla alicujus qui non sit de villa vbi castrum suum situm est, &c. Stanford, fo.152. Constabularius Turris London, for Custos turris, 32.H.8.ca.28 Constable of the Forrest, for the keeper of the Forrest.

offices, &c. Mes si tiel office soit grant a vn home, a auer & occupier per luy ou son deputie, donqz si loffice soit occupy p luy, ou per son deputie sicom il deuoit per le ley estre occupie, ceo suffist pur luy, ou autrement le grantor & ses heires poient ouste le grantee, come est auantdit.

such office bee granted to a man To haue and to occupie by himselfe or his deputie, then if the office bee occupied by him or his deputie, as it ought by the law to bee occupied, this sufficeth for him, or otherwise the grantor and his heires may ouste the grantee as is aforesaid.

(*) W.1.ca.7.

(a) Magna Carta, ca.19.

Stanf. fo.152. 32.H.8.ca.28.

¶ *Bedelarye.* Bedell is deriued of the French word Beadeau, which signifieth a messenger of the Court or vnder Baylife, in Latyn Bedellus.

And the oath of a Bedell of a Mannor is that he shall duly and truly execute all such Attachements and other Proces as shall be directed to him from the Lord or Steward of his Court, and that he shall present all pound Breaches, which shall happen within his office, and all chattells wayued, and estrayes.

¶ *Bayliwicke.* Of this sufficient hath beene said before.

Sect. 380.

¶ HEre Littleton termeth words of limitation to bee Conditions in law; for his first example is;

¶ *Durant le couerture enter eux.* Durante coopertura inter eos. This word (Durãte) is properly a word of limitation, as Durante viduitate, or Durante virginitate, or Durante vita, &c. And properly a Condition in Law is as hath beene said where the Law createth the same without any expresse words.

Dum, also maketh a limitation, as if a Lease be made, Dum sola fuerit, or Dum sola & casta vixerit. Dummodo is also a word of limitation as Dum-

37.H.6.27. 3.E.3.15. 3.H.7.

¶ Item estates de tres ou tenemẽts purront estre sur condition en ley, coment que sur lestate fait, ne fuit ascun mention ou reherſal fait de le condition. Sicome mittomus q̃ vn leas soit fait a le baron et a sa feme, a auer et tener a eux durant l' couerture enter eux, en cest cas ils ont estate pur termẽ de lour deux vies sur condition en ley, ſ. si vn de deux deuie, ou que deuorce soit fait enter eux, donque bien lirroit

ALso estates of lands or tenements may bee made vpon condition in law, albeit vpon the estate made there was not any mention or reherſall made of this condition. As put the case that a lease be made to the husband and wife, to haue and to hold to them during the the couerture betweene them. In this case they haue an estate for terme of their two liues vpon condition in law, s. if one of them dy, or that there be a diuorce betweene

ſtroit a le leſſor et a ſes heires dentrer, &c. them, then it ſhall bee lawfull for the leſſor and his heires to enter, &c.

modo ſolueret talem redditum. Quamdiu alſo is a word of limitation, for if a man grant a rent out of the Mannor of D. Quamdiu the Grantor ſhall bee dwelling vpon the Mannor, this is good, or Quamdiu ſe bene geſſerit. 14.E.2.*Grant* 92. 37.*H.*6.27.

And ſo be theſe words, Donec, Quouſque, Vſque ad, Tam diu, Vbicunque. 10.*Aſſ* 4.6.E.3.8.9.31. 3.E.3 18. *Annuity* 40. 19.*H.*6.54. *Temps E* 1. *Annuity* 130. 11.*Aſſ p.*8. 21.*Aſſ p.*18. 26.E.3.63. 7.E.4.10. 9.E.4.25 26. 9.*H.*6.39. 14.*H.*8.13.

¶ *Si lun de eux deuie, &c.* For if one of them die the couerture is diſſolued, and conſequently the ſtate determined by the limitation.

¶ *Ou que diuorce ſoit fait enter eux, &c.* Here is a diſtinction to be vnderſtood: for there be two kinde of diuorces, viz. one a Vinculo matrimonij, * and the other A menſa & thoro. Diuortium dicitur à diuertendo, or Diuortendo quia vir diuertitur ab vxore. Diuorces A vinculo matrimonij are theſe Cauſa Præcontractus, Cauſa Metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I reade in an ancient Record Coram Rege Termino Paſch. 30. E. 1. William de Chadworthes caſe, that he was diuorced from his wife for that he did carnally know her daughter before he married the mother; All which are cauſes of Diuorce preceding the marriage. * 47.*Aſſ.*27. 39.E.3.32.33. 11.*H.*4.14.76. *Bracton fo.*298. 18.E.4.28. 24.*H.*8.*baſtards Br.*44. 39.E.1.*baſtard* 21. 22.E.4.*tit Conſultat.*5. 6.E.3.249. 25.E.3.39.

A menſa & Thoro, as Cauſa Adulterij which diſſolueth not the marriage A vinculo Matrimonij, for it is ſubſequent to the marriage. And the Diuorce that Littleton here ſpeaketh of is intended of ſuch Diuorces, as diſſolue the marriage A vinculo matrimonij, and maketh the iſſue baſtard, becauſe they were not Iuſtæ nuptiæ. And therefore in Littletons caſe though the husband and wife be diuorced Cauſa Adulterij, yet the freehold continueth, becauſe the Couerture continueth. And it is further to be vnderſtood that many Diuorces that were of force by the Cannon Law, when Littleton wrote, are not at this day in force, for by the Statute of 32.H.8.ca.38. it is declared that all perſons be lawfull (that is, may lawfully marry) that be not prohibited by Gods lawe to marry, that is to ſay, that be not prohibited by the Leuiticall degrees. (*) *Vid. Sect.*399. 32.*H.*8.*ca.*38.

A man married the daughter of the ſiſter of his firſt wife, and was drawne in queſtion in the Eccleſiaſticall Court for this marriage alledging the ſame to be againſt the Cannons, and it was reſolued (n) by the Court of Common-Pleas vpon conſideration had of the ſaid Statute that the marriage could not be impeached, for that the ſame was declared by the ſaid Act of Parliament to be good, in aſmuch as it was not prohibited by the Leuiticall degrees, Et ſic de ſimilibus. (n) *Tr.*2 *Iac. Rot.*1033. *Richard Parſons caſe.*

*Sect.*381.

¶ Et que ils ont eſtate pur terme de lour deux vies, Probatur ſic, cheſcun home que ad eſtate de franktenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeſne, ou pur terme dauter vie, et per tiel leaſe ils ount franktenement, mes ils nont p ceſt grant fee, ne fee taile, ne pur terme dauter vie, Ergo, ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme auantdit, et en ceſt cas ſils ſteront waſt, le feoffor auera enuers eux briefe de waſt ſuppo-

AND that they haue an eſtate for term of their two liues, is proued thus, euery man that hath an eſtate of freehold in any lands or tenements, either he hath an eſtate in fee, or in fee taile, or for terme of his own life, or for terme of another mans life, & by ſuch a leaſe they haue a freehold, but they haue not by this grant fee, nor fee taile, nor for terme of anothers life, *Ergo*, they haue an eſtate for terme of their owne liues, but this is vpon condition in lawe in forme aforeſaid, and in this caſe if they ſhal do waſt, the feoffor ſhall

ſuppoſant per ſon breife, Quod tenet ad terminum vitæ,&c. **mes en ſon count il declare coment & en quel maner le leas fuit fait.**

haue a writ of waſte againſt them ſuppoſing by his writ, *Quod tenet ad terminũ vitæ,&c.* but in his count hee ſhall declare how, and in what manner the leaſe was made.

Pl.Com 561.b. Vi.Sect.345 ſimile.

¶ *Probatur ſic.* **By this argument logically drawne** a diuiſione, it appeareth, **how neceſſarie it is that our Student ſhould** (as Littleton did) **come from one of the Vniuerſities, to the ſtudie of the Common Law, where he may learne the liberall Arts, and eſpecially Logicke, for that teacheth a man not onely by inſt argument to conclude the matter in queſtion, but to diſcerne betweene truth and falſehood, and to bee a good method in his ſtudye, and probably to ſpeake to any Legall queſtion, and is deſined thus,** Dialectica eſt ſcientia probabiliter de quouis themate diſſerendi, **whereby it appeareth how neceſſarie it is for our Student.**

37.H.6.27. ¶ *Suppoſant per ſon briefe* Qd tenet ad terminum vitæ,*&c.* **This and the reſt of this Section is euident and plaine.**

Sect. 382.

Vi.Brall.lib.5.419. ¶ *SI vn Abbe.* So it is of a Biſhop, arch-Deacon, and other Eccleſiaſticall or temporall Bodie Politique or Corporate, or of any Officer or Graduate, or the like.

¶ *Reſigne ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

¶ **EN meſme le manner eſt, ſi vn Abbe fait vn Leaſe a vn hõe, a auer et tener a luy durant le temps que le leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate pur terme de ſa vie demeſn̄, mes ceo eſt ſur conditiõ en ley, ſ̃, que ſi labbe reſigna, ou ſoit depoſe, que bien lirroit a ſ̃ ſucceſſor dentrer,&c.**

IN the ſame manner it is if an Abbot make a leas to a man for yeares, to haue and to hold to him during the time that the Leſſor is Abbot; in this caſe the leſſee hath an Eſtate for term of his own life: but this is vpon condition in Law, s. That if the Abbot reſigne or be depoſed, that then it ſhall be lawfull for his ſucceſſor to enter,&c.

Section 383.

¶ *LIVRE Daſſiſes* is a Booke of the Reports of Caſes in the raigne of King Edward the third, and it is called the booke of Aſſiſes, becauſe the greateſt part of the caſes therein are vpon writs of Aſſiſes brought, as hath been ſaid, and which hath bene cited before.

¶ *Deuiſa les Tenements a vendre per ſon Executor.* **This muſt**

¶ **Item hõe poit veier en le Liur̄ Daſſiſe,** viz. anno 38.E.3.p.3. **vn pl̃ Daſſ. en ceſt forme que enſuiſt: ſ̃, Vn Aſſiſe de** Nouel Diſſeiſin **auterfoits fuit port vers A. que pleda al Aſſiſe, et troue fuit per verdict, Que laun-**

ALſo a man may ſee in the Booke of Aſſiſes, *Anno* 38.*E.* 3.*p.* 3. a plea of Aſſiſe in this form following, s. An Aſſiſe of *Nouel Diſſeiſin* was ſometime brought againſt A. who pleaded to the Aſſiſe, and it was found by verdict, that

launcestor le plaintif deuisa ses Tenemts a vendre per le Defendant, que fuit son Executor, et de faire distribution des deniers pur son alm: Et fuit troue que maintenant apres la mort le Testator, vn home luy tendist certaine summe de deniers pur les Tenements, mes non pas al value, & que le Executor puis auoit tenus les Tenements en sa main demesne per deux ans, al entent deles vender pluis chier a alcun auter, et troue fuit q̄ il auoit tout temps pris les profits de les Tenements a ſ̄ vse demesne sans rie faire pur lalme le mort, &c. Moubray Justice disoit, Lexecutor en tiel case est tenus p la ley a faire le vender a plus toft que il purroit apres la mort son Testator, et troue est que il refuse de faire vendr̄, & issint il auoit vn default en luy, et issint per force del deuise il fuist tenus dañ mis touts le profits auenants de les Tenements al vse l' mort, et troue est que il ad

the Anceſtour of the Plaintife deuiſed his lands to bee ſould by the Defendant who was his Executor, and to make diſtribution of the money for his Soule. And it was found, That preſently after the death of the Teſtator, one tendred to him a certaine ſum of mony for the lands, but not to the value, and that the Executor afterwards held the lands in his own hands two yeares, to the entent to ſell the ſame deerer to ſome other, and it was found that he had all the time taken the profits of the lands to his own vſe, without doing any thing for the ſoule of the deceaſed, &c. *Moubray* Iuſtice ſaid, The Executor in this caſe is bound by the Law to make the ſale as ſoone as hee may after the death of his Teſtator, and it is found that hee refuſed to make ſale, and ſo there was a default in him, and ſo by force of the Deuice he was bound to put all the profits comming of the lands to the vſe of the Dead, and it is found that he tooke them to his

be intended to bee of Lands deuiſable by Cuſtome, for Lands by the Common law were not deuiſable, (as hath beene ſayd:) for in this Section is implied a Diuerſity, viz. when a man deuiſeth that his Executor ſhall ſell the Land, there the lands diſcend in the meane time to the heire, and vntill the ſale bee made, the heire may enter and take the profits. But when the Land is deuiſed to his Executor to be ſould, there the deuiſe taketh away the diſcent, and veſteth the ſtate of the land in the Executor, and he may enter and take the profits, and make ſale according to the deuiſe. And here it appeareth by our Author, That when a man deuiſeth his Tenements to be ſould by his Executors, it is all one as if he had deuiſed his Tenements to his executors to be ſould: and the reaſon is, becauſe he deuiſeth the tenements, whereby hee breakes the Diſcent.

¶ Mowbray. Iohn Mowbray was a reuerend Iudge of the Court of Common pleas, and diſcended of a Noble Familie.

¶ *Lexecutor en tiel caſe eſt tenus per la Ley a faire le vender a pluis toſt que il purroit apres la mort ſon Teſtator, &c.* And the reaſon hereof is, for that the meane profits taken before the ſale, ſhall not bee Aſſets, ſo as he may be compellable to pay debts with the ſame, and therefore the law will enforce him to ſell the lands as ſoone as hee can, for otherwiſe hee ſhall take aduantage of his owne laches: But if a man deuiſe that his Executor ſhall ſell his land, there hee may ſell it at any time, for that hee hath but a bare power, and no profit. And by this caſe it appeareth, what conſtruction the Law maketh for the ſpeedie payment of debts. And here is to bee obſerued, That many words

words in a will doe make a Condition in Law, that make no Condition in a deed: as here to deuise lands to an Executor ad vendend, so if lands be deuised to one ad soluendum 20.l. to I.S. or paying twentie pounds to I.N. this amounts to a Condition And Crickmers case was this, A man seised of certaine lands holden in Socage had issue two daughters A. and B. and deuised all his lands to A and her heires, to pay vnto B. a certaine summe of money at a certain day and place, the money was not payd, and it was adiudged, That these words, To pay, &c. did amount in a will to a Condition, and the reason was, for that the land was deuised to A. for that purpose, otherwise B. to whom the money was appointed to be paid, should be remediesse, Et interest reipublicæ suprema hominum testamenta rata haberi: and the Lessee of B. vpon an actuall Ejectment recouered the moitie of the land against A.

Mich. 31 & 32. El. in the Kin. Bench. Crickmers case adiudge. D. 360. E. 6. fo. 74. 7. E. 6. 76.

prise a ẽs vse demeine, et issint auter default en luy: Per que fuit adiudge que le plaintife recouera. Et issint appiert per le dit iudgement, que per force del dit deuise, lexecutor nauoit Estate ne poier en les Tenements, forsque sur condition en ley.

owne vse, and so another default in him. Wherefore it was adiudged, That the Pl. should recouer. And so it appeareth by the sayd Iudgement, That by force of the sayd Deuise the Executour had no estate nor power in the lands, but vpon condition in law.

¶ *Et issint appiert per le iudgement, &c.* This conclusion vpon a Iudgement is of great authoritie in Law, Quia Iudicium pro veritate accipitur, and as it hath beene sayd, Iudicium is quasi juris dictum.

Sect. 384.

9. E. 4. 36.

¶ HEreby it appeareth That Limitations which (as hath bin sayd, Littleton termeth Conditions in Law) may be pleaded without Deed, and the reason of our Author is obseruable, because the Law in it selfe purporteth the Condition, whereof somewhat hath beene sayd before: and therefore looke backe to the Conditions in Law, or words of limitation, and withall that a stranger may take aduantage of a limitation, as hath beene sayd.

¶ Et mults autres choses et cases y sont dessates s condition ẽ la Ley, et en tiels cases il ne besoigne dauer monstre ascun fait rehearsant la Condition, pur ceo que la Ley en luy mesme purport l' Condition, &c.

AND many other things there are of Estates vpon Condition in Law, and in such cases hee needed not to haue shewed any Deed, rehearsing the condition, for that the Law it selfe purporteth the Condition, &c.

Ex paucis dictis intendere plurima possis.

Ex paucis dictis intendere plurima possis.

fo. Sect. 220.

¶ Plus ierra dit de Conditions en le prochein Chapter, en le Chapter de Releases, et en le Chapter de Discontinuance.

More shall bee sayd of Conditions in the next Chapter, in the Chap. of Releases, and in the chapter of Discontinuance.

Britt. li. 2. fo 16. 17. Ass. p. 2. 5. E. 3. 42 E. 3. 1. 43. E. 3. 17 43. Ass. 12. 7. H. 6. 43. 8. H. 6. 23. 32. E. 3. Annu. 30 5. E. 3. Annuitie 44.

32. Ass. p. 1. 30. Ass. p. 11. 31. Ass. 32.

¶ *Defeasance*, Defeisantia is fetched from the French word De faire, i. to defeat or vndoe, infectum reddere quod factum est. There is a diuersitie betweene Inheritances executed, and Inheritances executorie, as Lands executed by Liuerie, &c. cannot by Indenture of Defeasance be defeated afterwards. And so if a Disseisin release to a Disseisor, it cannot be defeated by Indentures of Defeasance made afterwards, but at the time of the release or feoffement, &c. the same may be defeated by Indentures of Defeasance, for it is a Maxime in Law, Quę incontinenti fiunt in esse videntur.

But Rents, Annuities, Conditions, warranties, and such like that bee Inheritances Executory may be defeated by Defeasances made eyther at that time, or at any time after. And so the Law is of Statutes, Recognizances, Obligations, and other things Executory.

20. Ass.pl.7.7.E.4.29. Browning & Beſons caſe. Pl. Com.131. 28.H.8.Dier 6 27.H.8.15. 19.R.2. dome 10. Albanes caſe lib.1.107.

¶ *Ex paucis dictis intendere plurima poſſis.*

Verſes at the firſt were inuented for the helpe of memory, and it ſtandeth well with the gravitie of our Lawyer to cite them. By this Verſe of our Author, Inferences and Concluſions in like caſes are warrantable.

Laſtly, ſomewhat were neceſſary to be ſpoken concerning clauſes of prouiſoes, containing Power of Reuocation, which ſince Littleton wrote, are crept into voluntarie Conueyances, which paſſe by rayſing of vſes, and executed by the (*) Statute of 27.H.8. and are become very frequent, and the Inheritance of many depend thereupon. As if a man ſeiſed of Lands in fee, and hauing iſſue diuers Sonnes by Deed indented, couenanteth in conſideration of Fatherly loue, and the aduancement of his Blood, or vpon any other good conſideration to ſtand ſeiſed of three Acres of Land to the vſe of himſelfe for life, and after to the vſe of Thomas his eldeſt Sonne in tayle, and for default of ſuch iſſue to the vſe of his ſecond Son in tayle, with diuers like remaynders ouer. With a Prouiſo that it ſhall be lawfull for the Couenant or at any time during his life to reuoke any of the ſaid vſes, &c. This Prouiſo being coupled with an vſe, is allowed to bee good, and not repugnant to the former States. But in caſe of a Feoffement, or other Conueyance, whereby the Feoffee or Grantee, &c. is in by the Common Law, ſuch a Prouiſo were meerely repugnant and void.

(*) 27.H.8.cap.10.

And firſt in the caſe aforeſaid, if the Couenantor who had an eſtate for life doe reuoke the vſes according to his power, he is ſeiſed againe in fee ſimple without entry or clayme.

Secondly, he may reuoke part at one time, and part at another.

Thirdly, If he make a feoffment in fee, or leuie a fine, &c. of any part, this doth extinguiſh his power but for that part, whereas in that caſe the whole Condition is extinct. But if it be made of the whole, all the power is extinguiſhed. So as to ſome purpoſes, it is of the nature of a Condition, and to other, in nature of a limitation.

Lib.1.fol.173.174. Digges caſe. Lib.1.fol.107. Albanies caſe. Lib.10.fol.143. Sroper caſe Lib.7 fol.12.13. Sir Francis Engleſields caſe.

Fourthly, If hee that hath ſuch power of reuocation hath no preſent intereſt in the Land, nor by the Ceſſor of the ſtate ſhall haue nothing, then his feoffment or fine, &c. of the Land is no extinguiſhment of his power, becauſe it is mere collaterall to the Land.

Fiftly, By the ſame Conueyance that the old vſes bee reuoked, by the ſame may new bee created or limited, where the former ceaſe ipſo facto by the reuocation, without entrie or clayme.

Sixtly, That theſe reuocations are fauourably interpreted, becauſe many mens Inheritances depend on the ſame. And here I may apply the aboueſaid verſe.

Ex paucis dictis intendere plurima poſſis.

Chap.6. Diſcents que tollent Entries. *Sect.385.*

¶ Diſcents, q̃ tollent Entries ſont en deux maners, ceſtaſcauoir, ou diſcent eſt en fee, ou en fee taile: Diſcents en Fee que tollent entries ſont, ſicome home ſeiſie de certaine terres ou tenements eſt

Diſcents which toll Entries are in two mãners, to wit, where the diſcent is in fee, or in fee taile. Diſcents in fee which toll entries are, as if a man ſeiſed of certaine lands or tenemẽts is by another diſſeiſed, and the diſſeiſor hath iſſue, and dieth of

¶ *Diſcents.* This word cõmeth of the Latin word diſcendere, id eſt, ex loco ſuperiore in inferiorem mouere, and in legall vnderſtanding it is taken when Land, &c. after the death of the Anceſtor is caſt by Courſe of Law vpon the heire, which the Law calleth a Diſcent. And this is the nobleſt and worthieſt meanes whereby Lands are deriued from one to another, becauſe

Mirror.cap.2.§.5. Bracton lib.5.fol.370.& 434. Britton fol.115.215. Vide Sect 5.

becauſe it is wrought and beſted by the Act of Law, and Right of Bloud, to the worthieſt and next of the Bloud and Kindred of the Anceſter, and therefore it hath not in the Common Law altogether the ſame ſignification, that it hath in the Ciuil Law, for the Ciuilians call him, Hæredem qui ex teſtamento ſuccedit in vniuerſum ius teſtatoris. But by the Common Law hee is only Heire which ſucceedeth by Right of Bloud. And this agreeth well with the Etymologie of the word (Heire) to whom the Lands diſcend, for Hæres dicitur ab hærendo, quia qui hæres eſt hæret, hoc eſt, proximus eſt ſanguine illi cuius eſt Hæres. So as hæ that is Hæres, ſanguinis eſt hæres & hærus hæreditatis.

¶ *Diſcents que tollent entries ſont en deux Manners.* Here is an exact and perfect diuiſion made by our Author, and withall plaine & perſpicuous.

ꝑ vn auter diſſeiſie, & le diſſeiſor ad iſſue & morust de tiel eſtate ſeiſie, ore les tenements diſcendont al iſſue del diſſeiſor per courſe de la ley come heire a luy: Et pur ceo que la ley mitte les terres ou tenements ſur liſſue per force del diſcent, iſſint que liſſue vient a les tenements per courſe de ley, & nemy per ſon fait demeſne, lentrie le diſſeiſee eſt tolle, & il eſt mis de ſuer vn briefe Dentre ſur diſſeiſin **enuers le heire le diſſeiſor, de recouerer la terre.**

ſuch eſtate ſeiſed, now the Lands diſcend to the iſſue of the diſſeiſor by courſe of Law, as heire vntohim. And becauſe the Law caſt the lands or tenements vpon the iſſue by force of the Diſcent, ſo as the iſſue commeth to the lands by courſe of Law, and not by his owne Act, the entrie of the Diſſeiſee is taken away, and hee is put to ſue a Writ of Entrie *ſur diſſeiſin* againſt the heire of the Diſſeiſor, to recouer the Land.

Now as a Diſcent is the worthieſt meanes to come to Lands, &c. ſo hath the Heire many priuiledges, then any that by other order or meanes come to the Lands, &c. as ſhall appeare hereafter.

(*) *Bracton lib.4.fol.162.& 209. Britton fol.115. Flet.lib.4.cap.2.*

(a) *50.E.3.21.1.Aſſ.13. 20.H.3.Aſſ.432.9.Aſſ.15. 29.Aſſ.54. 26.Aſſ.12. 21.Aſſ.28.43.Aſſiſe 17.*

(b) *Lamb.explicat.fol.120. 70.*

Nota, In ancient time (*) if the Diſſeiſor had bin in long poſſeſſion, the Diſſeiſee could not haue entred vpon him. (a) Likewiſe the Diſſeiſee could not haue entred vpon the Feoffee of the Diſſeiſor, if he had continued a yeare and a day in quiet poſſeſſion. But the Law is changed in both theſe Caſes, only the dying ſeiſed being an Act in Law doth hold at this day, and this ſeemeth to be very ancient, for this was the Law before the Conqueſt. (b) Porro autem quam maritus ſine lite & controuerſia ſedem incoluerit, eam coniux & proles ſine controuerſia poſſidento, ſi qua in illum lis fuerit illata viuentem, eam hæredes ad ſe (perinde atque is viuus) accipiunto.

And one of the reaſons of this ancient Law may be, that the heire cannot ſuddenly by intendement of Law, know the true ſtate of his Title. And for that many aduantages follow the poſſeſſion and Tenant, the Law taketh away the entrie of him that would not enter vpon the Anceſtor, who is preſumed to know his Title, and driueth him to his Action againſt him, that may be ignorant thereof.

11.H.7.12. 49.E.3.24.

¶ *Et morust de tiel eſtate ſeiſie.* To a Diſcent that taketh away an entrie, a dying ſeiſed is neceſſary, as here it appeareth, but a man to other purpoſes may haue Lands by Diſcent, though his Anceſtor died not ſeiſed, as hath beene ſaid before.

33.E.3.gard.162.6.H.4.4. 39.E.3.36.15.E.4.14. F.N.B.143.q. 7.H.4.12.5.2.Aſſ.p.9. 21.E.3.2.

¶ *Des terres ou tenements.* That is of ſuch tenements as bee corporeall, and doe lie in liuery, and not of Inheritances, which lie in grant, as Aduowſons, Rents, Commons in groſſe, and ſuch like which be Inheritances Incorporeall, and yet are included within this word (tenements.) For Diſcents of them doe not put him that right hath to an Action, and the reaſon of this diuerſitie is, for that houſes ſerue for the habitation of men, and Lands to be manured for their ſuſtenance, and therefore the heire after a Diſcent ſhall not be moleſted or diſturbed in them by entrie.

¶ *Eſt pur vn auter diſſeiſie.* The like Law is, of an abatement or intruſion, and of the Feoffees, or Donees, &c.

Vpon

Upon the words of Littleton a diuersitie may be collected, that if a recouery be had by A. against B. and before execution B. die seised, this Discent shall not take away the entrie of the Recoueror. But if after execution B. had disseised the Recoueror and died seised this discent shall take away the entrie of the Recoueror within the expresse words of Littleton: and so it is in case of a Fine.

33.E.3.title 3. Entrie conge 51.45.E.3.quar Imp.159. 27.E.3.88. 9 H.6.49. 21.H.6.17. 3.E.4.6. 12.E.4.19. 3.H.7.3. 6.E.4. 11.7.H.7.15. 5.H.7.31. 10.H.7.5.6.

(n) A recouery is had against Tenant for life, where the remainder is ouer in fee, Tenant for life dieth, he in remainder entreth before execution, and dieth, the entrie of the recoueror is lawfull, because hee is priuie in estate, otherwise it is if the Discent had beene after execution.

(n) 5.H.7.2.

A. recouereth an Aduowson against B. in a writ of Right, and hath iudgement finall, the Incumbent dieth. B. by vsurpation presents to the Church, and his Clarke is admitted and instituted, B. dieth, A. is put out of possession, and the heire of B. is not so bound by the iudgement either in bloud or estate, but he shall present (o) B. leuie a fine to A. of an Aduowson to him and his heires, after the Church become void. B. present by vsurpation, and his Clarke is admitted and instituted, this shall put A. the Comune out of possession. And the reason of these two cases is for that at the Common Law, euery presentation to a Church did put the rightfull Patron out of possession, and did put him to his writ of Right, whether the presentation were by Title or without, and therefore albeit the vsurpation were in both the said cases before execution, yet it put the rightfull Patron out of possession. So note a diuersitie betweene a recouery of Land, and of an Aduowson.

45.E.3. quare Imp.139.

(o) 8.E.2.quare Imp.166.

¶ *Lentrie le disseisee est tolle.* Here is one of the priuiledges which the Law giueth to the heire by Discent of Houses and Lands.

(p) At the Common Law if the Disseisor, Abator, or Intrudor had died seised soone after the wrong done, the Disseisee and his heires had beene barred of his and their entrie without any time limited by Law, but now by the Statute (q) made since Littleton wrote, it is enacted, that except such Disseisor hath beene in the peaceable possession of such Mannors, Lands, &c. whereof he shall die seised by the space of fiue yeares next after such disseisin, &c. without entrie or continuall clayme, &c. that there such dying seised, &c. shall not take away the entrie of such person or persons, &c. But after the fiue yeares the Disseisee must make such continuall clayme as our Author hath taught vs, the learning whereof is necessary to be knowne. And it is said that Abators and Intrudors are out of this Statute, because the Statute is penall and extends only to a Disseisor, and that was the most common mischiefe. Et ad ea quæ frequentius accidunt iura adaptantur.

(p) Lestatut de 32.H.8.ca.33 Vide Sect.422.426.

(q) 37.H.6.1.

Pl.Com.47.in Wimbishes case.

The Feoffee of a Disseisor is out of the said Statute, & remayne at the Common Law. But to a Disseisor the statute is taken fauourably for aduancement of the ancient right: for whether the disseisin be without force, or with force it is within the Statute. And albeit the Statute speake of him that at the time of such Discent had title of entry, &c. or his heires, yet the successors of bodies Politique or Corporate, so you hold your selfe to a disseisin, are within the remedie of this Statute, for the Statute extended cleerely to the Predecessor, being disseised; and consequently without naming of his Successor extendeth to him, for he is the person that at the times of such Discent had title of entrie.

Mich.4.& 5.Eliz. Dier 219. acc.

But if a man make a Lease for life, and the Lesse for life is disseised, and the Disseisor dis seised, the Lesse for life may enter within fiue yeares, but if he die before hee doth enter, it is said that the entry of him in the Reuersion is not lawfull, because his entry was not lawfull vpon the Disseisor at the time of the Discent, as the Statute speaketh. But if Lesse for life had dyed first, and then the Disseisor had died seised, he in the Reuersion had beene within the remedie of the Statute, because he had title of entry at the time of the Discent, as the Statute speaketh, and so within the expresse letter of the Statute, albeit, the Disseisin was not immediate to him, and the like is to be said of a remaynder, &c.

Vide Pl.Com.47. vbi supra.

¶ *Breife dentrie sur disseisin*, Breue de ingressu super disseisinam. Of this writ somewhat shall be said in the next Section.

F.N.B.191.

Section 386.

¶ DIscēts e taile que tollēt entries sont, sicome home est disseisie, et

DIscents in Tayle which take away Entries are, as if a man bee disseised, and the

¶ *Oruſt de tiel estate seisie.*

If a Disseisor makes a gift in tayle, and the Donee discontinueth in fee, and disseise the

the Diſcontinnee, and dyeth ſeiſed, this diſcent ſhall not take away the entrie of the diſſeiſee for the diſcent of the fee ſimple is vaniſhed and gone, by the Remitter, and albeit the iſſue be in by force of the eſtate taile, yet the Donee dyed not ſeiſed of that eſtate, and of neceſſitie there muſt be a dying ſeiſed as hath beene ſaid, which is a point worthy of obſeruation, and implyeth many things.

¶ *En ceſt caſe lentrie le diſſeiſee eſt tolle.* But if a Diſſeiſor make a gift in taile, and the Donee hath iſſue and dyeth ſeiſed, now is the entrie of the Diſſeiſee taken away, but if the iſſue be without iſſue, ſo as the eſtate taile which diſcended is ſpent, the entrie of the Diſſeiſe is reuiued, and he may enter vpon him in the reuerſion or remainder.

le diſſeiſor dona en la terre a vn auter en le taile, & le tenant en le taile ad iſſue & mozuſt de tiel eſtate ſeiſie, & iſſue enter, en ceſt caſe lentre l' diſſeiſee eſt tolle, & il eſt mis de ſuer enuers iſſue de l' tenant en taile vn briefe. Dentre ſur diſſeiſin.

diſſeiſor giueth the ſame land to another in taile, and the tenant in taile hath iſſue and dieth of ſuch eſtate ſeiſed and the iſſue enter, in this caſe the entrie of the diſſeiſee is taken away & he is put to ſue againſt the iſſue of the tenant in taile a writ of *Entrie ſur diſſeiſin.*

9.H.7.24.

So if there be Grandfather, Father and Son, and the ſon diſſeiſeth one, and inuoketh the Grandfather who dieth ſeiſed, and the land diſcendeth to the Father, now is the entrie of the Diſſeiſee taken away; but if the Father dieth ſeiſed, and the land deſcendeth to the Sonne, now is the entrie of the Diſſeiſee reuiued, and he may enter vpon the ſonne, who ſhall take no aduantage of the diſcent, becauſe he did the wrong vnto the diſſeiſee. But in the caſe aboueſaid ſome haue ſaid that where after ſuch diſcent to the Father, he made a Leaſe to the ſon for terme of another mans life vpon whom the Diſſeiſee entred, the Sonne brought an Aſſiſe and recouered, and the reaſon that hath beene yeelded is for that the Sonne had not a fee ſimple which he gained by diſſeiſin, but is a purchaſer of the freehold only from the Father, and the diſcent remaine not purged. Contrary it were as it is there ſaid if the Sonne were heire to the diſcent But the booke cited there in Fitzherb. tit. Title Placit. 6 doth not warrant that caſe, and I hold the Law to be contrary, viz. that the diſſeiſee in that caſe ſhall enter vpon the Diſſeiſor, aſwell as if the Father had conueyed the whole fee ſimple to the Sonne, for in that caſe the diſcent of the Father is not purged. If a Diſſeiſor make a Leaſe to an Infant for life, and he is diſſeiſed, and a diſcent caſt, the Infant enters, the entrie of the Diſſeiſee is lawfull vpon him. More ſhall be ſaid of the like matter in this chapter hereafter in his proper place, Sect. 393.395.

15.H.4.8.9.
33.H.6.5.b. per Moyle.
34.H.6.11.a. per Curiam.
Vid.Sect.395.

13.E.3. Br.919. Entrie Cong.127.

¶ *Breiſe dentrie ſur diſſeiſin.* Breue de ingreſſu ſuper diſſeiſinam. This writ lyeth only vpon a diſſeiſin made to the Demandant or to ſome of his Anceſtors, and of this writ there be foure kindes, Firſt the writ that lyeth for the Diſſeiſee againſt the Diſſeiſor vpon a diſſeiſin done by himſelfe, and this is called a writ of entrie in the nature of an Aſſiſe. The ſecond is a writ of Entrie ſur diſſeiſin en le Per whereof Littleton here ſpeaketh, for the heire by diſcent is in the Per by his Anceſter: ſo it is if the Diſſeiſor make a feoffment in fee, a gift in taile, or a Leaſe for life, for they are in the Per by the Diſſeiſor. (*) The third is a writ of Entrie Sur diſſeiſin en le Per & Cui, as where A. being the Feoffee of D. the Diſſeiſor maketh a feoffment ouer to B. there the Diſſeiſee ſhall haue a writ of Entrie Sur diſſeiſin of Lands, &c in which B. had no entrie but by A. to whom D. demiſed the ſame, who vniuſtly and without iudgement diſſeiſed the Demandant. Theſe are called Gradus, Degrees which are to be obſerued or elſe the writ is abatable for Sicut natura non facit ſaltum, ita nec lex.

19.H.6.56. 9.H.5.9.

Bracton.lib.5.fo.219.b. & 318.Britton.fo.264.265. Fleta lib.5.cap.35. 9.E.3.216.
(*) 22.E.3.1.b. 7.E.3.25. F.N.B.192.

The fourth is a writ of Entrie ſur diſſeiſin in le poſt, which lyeth when after a diſſeiſin the land is remoued from hand to hand beyond the degrees, and it is called In le Poſt, becauſe the words of the writ be Poſt diſſeiſinam quam D. iniuſte, &c. fecit, &c. the formes of theſe writs you ſhall reade in the Regiſter and F.N.B. and therefore it were needleſſe to recite them here. So as a degree is of two ſorts, either by act in Law, whereof Littleton here putteth an example of a Diſcent, or by act of the partie by lawfull conueyance as is aforeſaid. But it is to be vnderſtood, that at the Common Law, if the lands were conueyed out of the degrees, the Demandant was driuen to his writ of right, in reſpect of his long poſſeſſion in ſo many diuers hands, which the Law doth euer reſpect and fauour. And therefore by the Statute (a) of Marlebridge the writ of Entrie in le poſt is giuen, Prouiſum eſt etiam quod ſi alienationes illæ de quibus breue de ingreſſu dari conſueuit, per tot gradus fiant, per quot breue illud in forma prius viſitata fieri non poſſit, habeant conquerentes breue ad recuperandã ſeiſinam ſuam ſine mentione

14.H.4.40.

(a) Malbr.ca.29. 34.E.3.70.

mentione gradaum, ad cuiuſcunque manus per huiuſmodi alienationes res illa deuenerit, per breue originale, & per commune conſilium domini regis inde prouidendum, &c.

Now it is neceſſary to be knowne what doth make a degree. First no eſtate gained by wrong doth make a degree, and therefore neither Abatement, Intruſion, or Diſſeiſin vpon Diſſeiſin doth make a degree. Neither doth euery change by lawfull title worke a degree, as if a Biſhop or an Abbot, or the like diſſeiſe one and die, and his ſucceſſor is in by lawfull title, for though the perſon be altered, yet the right remaines where it was, viz. in the Church, and both of them ſeiſed in the ſame right, viz. in the right of the Church, and therefore in the very caſe Bracton (b) demands the queſtion An faciunt gradum de Abbate in abbatem ſicut de hærede in hæredem? Et videtur quod non magis quam in computatione diſcenſus, quia etſi alternetur perſona, non propter hoc alternatur dignitas ſed ſemper manet. And herewith agreeth (c) Fleta.

Bracton, vbi ſupra.
Britton, vbi ſupra.
Fleta vbi ſupra.
4.E.2.bre.790. 21.H.6.8.
(b) *Bracton, lib.4.fo.321.*
5.E.3.38. 5.E.2.entrie 66.
11.H.4.83.
(c) *Fleta, lib.5.ca.34.*

Alſo an eſtate made to the King doth make no degree, and therefore if a Diſſeiſor by Deede inrolled conney the land to the King, and the King by his Charter granteth it ouer, the Diſſeiſee cannot haue a Writ of Entrie in le per & Cui, but in le Poſt, for the Kings Charter is ſo high a matter of record as it maketh no degree.

3.E.3.entrie.11. 22.E.3.7. F.N.B.191.k.

Alſo an eſtate of a Tenant by the Curteſie, or of the Lord by eſcheate, or of an execution of an vſe by the ſtatute of 27.H.8. or by iudgement, or recouery, or of any other that come in in the poſt, worke no degree. (d) But a tenancie in dower by Aſſignement of the heire doth worke a degree, becauſe ſhe is in by her husband, but Aſſignement of Dower by a Diſſeiſor worketh no degree, but is in the Poſt, as hereafter ſhall be ſaid in his proper place.

5.E.2.entrie 66.
7 E.3.360.
(d) *36.H.6.dower 30.*

When the degrees are paſt, ſo as a Writ of entrie in the Poſt doth lye, yet by euent it may be brought within the degrees againe, as if the Diſſeiſor infeoffe A. who infeoffes B. who infeoffe C. or if the Diſſeiſor die ſeiſed, and the land diſcend to A. and from him to C, now are the degrees paſt, and yet if C. infeoffe A. or B. now it is brought within the degrees againe.

44.E.3.4.5. 39.E.3.25. 5.H.7.6. 3.H.6.38.

If the Diſſeiſor make a Leaſe for life, the remainder in fee, Tenant for life dyeth, he in the remainder is in the Per, becauſe he now claimeth immediately from the Diſſeiſor, and both theſe eſtates make one degree.

50.E.3.27.

Note there be diuers other Writs of entrie, then a Writ of entrie Sur diſſeiſin whereof Littleton here ſpeakes, as a Writ of entrie Ad terminum qui præteriit, in caſu prouiſo, in conſimili caſu, ad communem legem, ſine aſſenſu capituli, dum fuit infra ætatem, dum non fuit compos mentis, cui in vita, Sur cui in vita, Intruſion, Ceſſauit, and the like, and that which hath beene ſaid of one may be applyed to all.

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¶ Et nota que en tiels diſcents, que tollent entries, il couient que home mourſt ſeiſie en ſon demeſne come de fee, ou en ſon demeſne come de fee taile. Car vn mourant ſeiſie pur terme de vie, ne pur terme dauter vie, ne vnques tollent entre.

AND note that in ſuch diſcēts which take away entries, it behooueth that a man die ſeiſed in his demeſne as of fee, or in his demeſne as of fee taile; for a dying ſeiſed for terme of life, or for terme of another mans life doth neuer take away an entrie.

¶ If a Diſſeiſee make a Leaſe to a man and to his heires during the life of I.S. and the Leſſee dieth this ſhall not take away the entrie of the Diſſeiſee, becauſe he that died ſeiſed had but a freehold only, and heires in that caſe were added to preuent the occupant, for the heire in that caſe ſhall not haue his age as it was adiudged in (d) Lambs caſe.

Dier.8.Eliz.253.
7.H.4.46. 8.H.4.15.
17.E.3.48. 11.H.4.43.
(e) *Paſch.16.Eliz. in Communibanco.*

But if he in the reuerſion diſſeiſe his Tenant for life, and dyeth ſeiſed, this diſcent ſhall take away the entrie of the Tenant for life.

3.E.3.tit. Entr. Cong. 58.F.N.B.145.m. 9.H.7.25.a.

So it is if there be Tenant for life, the remainder in taile, the remainder in fee, and Tenant in taile diſſeiſeth the Tenant for life and dyeth ſeiſed, this ſhall take away the entrie of the Tenant for life.

9.H.7.25.

But if the Kings Tenant for life be diſſeiſed, and the Diſſeiſor diſſeiſed, this diſcent ſhall not take away the entrie of the Leſſee, becauſe the Diſſeiſor had but a bare eſtate during the life of the Leſſee, and Littleton ſaith, that a diſcent of an eſtate for terme of another mans life ſhall not take away an entrie.

¶ *En ſon demeſne come de fee.* If an infant bee diſſeiſed, and the

Diſſeiſor die ſeiſed, and after the infant commeth to full age, the heire of the Diſſeiſee die before he entreth, albeit he dyed not ſeiſed of an actuall ſeiſin, but of a ſeiſin in Law, yet that ſhall take away the entrie of the Diſſeiſee. (*) And yet in pleading the ſecond heire ſhall (as hath beene ſaid) make himſelfe heire to the diſſeiſor, and that land ſhall not be recouered in value for the warrantie made of other lands by the firſt heire, and though the firſt heire had but a ſeiſin in Law, yet he is within the words of Littleton, For he was ſeiſed in his demeſne as of fee,

Temp: E.1. Reliefe. 12. Dier 14. Eliz. 308. 40. E. 3. 9. b. (*) 24. E. 3. 47.

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AND therefore if a Diſſeiſor make a Leaſe for yeares, and die ſeiſed of the Reuerſion, this diſcent ſhall take away the entrie of the Diſſeiſee, becauſe hee died ſeiſed of the Fee and Franktenement. Like Law it is if the Land be extended vpon a Statute, Iudgment or Recogniſance, and ſo it is in caſe of a Remainder.

But if he had made a Leaſe for life, and die ſeiſed of the Reuerſion, this diſcent ſhall not take away the entrie of the Diſſeiſee, for that though he had the Fee, yet he had not the Franktenement.

Vi. Sect. 302. 393.

So it is of a Tenaunt in Taile mutatis mutandis, and note the Law doth euer giue great reſpect to the Eſtate of Freehold, though it be but for terme of life.

¶ Item vn diſcent de reuerſion, ou de Remainder, ne vnques tollent entrie, iſſint que en tiels caſes que tollent entries, per force de diſcents, il conuent que celuy que mourſt ſeiſie ad Fee et Franktenemẽt al temps de ſon morant, ou Fee taile et Franktenement al temps de ſon morant, ou autrement tiel diſcent ne tolle entre.

ALſo a Diſcent of a Reuerſion or of a Remainder, doth not take away an Entrie. So as in thoſe caſes which take away Entries by force of Diſcents, it behooueth that hee dieth ſeiſed of Fee and Freehold at the time of his deceaſe, or of Fee taile and Freehold at the time of his death, or otherwiſe ſuch diſcent doth not take away an Entrie.

If a Diſſeiſor make a Leaſe for terme of his owne life, and dieth, this diſcent ſhall not take away the entrie of the Diſſeiſee, for though the Fee and Franktenement diſcend to the Iſſue, yet the Diſſeiſor died not ſeiſed of the Fee and Franktenement: and Littleton ſaith, That vnleſſe he hath the Fee and Franktenement at the time of his deceaſe, ſuch diſcent ſhall not take away the entrie.

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¶ BY this it appeareth, that a Diſcent in the Collaterall Line doth take away an entrie, as well as in the Lineall.

¶ Morurſt ſeiſie &c. Here (&c.) implieth Fee ſimple, or Fee taile.

¶ Item come eſt dit de Diſcents que diſcendont al iſſue de ceux que mouront ſeiſies, &c. Meſme la Ley eſt lou ils nont aſcun iſſue, mes les tenements diſcendont al frere, ſoer, vncle, ou auter coſin de celuy que mourſt ſeiſie.

ALſo as it is ſayd of Diſcents which diſcend to the Iſſue of them which die ſeiſed, &c. the ſame Law is where they haue no iſſue, but the lands diſcend to the Brother, Siſter, Vncle, or other Coſine of him which dieth ſeiſed.

Sect.

Sect. 390.

¶ ITem ſi ſoit Seignior et tenant, et le Tenant ſoit diſſeiſie, et le diſſeiſor aliena a vn auter en fee, et la lienee deuie ſaunz heire, et le Seignior enter come en ſon eſcheat, en ceſt caſe le Diſſeiſee poet entrer ſur le Seignior, pur ceo que le Seignior ne vient a le Terre per diſcent, mes per voy deſcheat.

ALſo if there bee Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſor alien to another in Fee, and the Alienee die without iſſue, and the Lord enter as in his Eſcheat: In this caſe the Diſſeiſee may enter vpon the Lord, becauſe the Lord commeth not to the Land by Diſcent, but by way of Eſcheat.

¶ *LE Diſſeiſee poet enter ſur le ſeignior, &c.* For albeit the Diſſeiſor die ſeiſed, and the Lord by Eſcheat commeth to the Land by act in Law, yet becauſe the land diſcendeth not to him, the entrie of the Diſſeiſee in reſpect of the Eſcheat ſhall not be taken away. For a dying ſeiſed, and a diſcent, and not a dying ſeiſed and an Eſcheat, doth take away an entrie: for (as hath beene ſayd) the diſcent is the worthier title. But in that caſe, if the Lord by Eſcheat die ſeiſed, and the Land diſcend to his heire, that diſcent ſhall take away the entrie of the Diſſeiſee. So it is if the Diſſeiſor die ſeiſed, and the 37.H.6.1.9.H.7.24.b

the heire of the Diſſeiſor dieth without heire, the Diſſeiſee cannot enter vpon the Lord by Eſcheat. So as there is a diuerſitie as touching the diſcent, when after a diſcent caſt, the Iſſue in Taile dieth without Iſſue, and when after a diſcent the heire in fee ſimple dieth without heire, for he in the Reuerſion, or one vpon the eſtate taile claimeth in aboue the ſtate taile, and the lord by Eſcheat claimeth in vnder the heire in Fee ſimple.

Section 391.

¶ ITem ſi home ſeiſie de certaine Terre en fee, ou en Fee taile, ſur condition de render certaine rent, ou ſur auter condition, coment que tiel Tenãt ſeiſie en fee, ou en fee taile, morust ſeiſie, vncore ſi le condition ſoit enfreint en lour vies, ou apres lour deceaſe, ceo ne tollera pas lentrie del Feoffor, ou del Donor ou de lour heires, pur ceo que le Tenancie

ALſo if a man bee ſeiſed of certain land in Fee or in Fee taile, vpon condition to render certain rent, or vpon other condition, albeit ſuch Tenaunt ſeiſed in Fee or in Fee Tayle, dyeth ſeiſed, yet if the Condition bee broken in their liues, or after their deceaſe, this ſhall not take away the entrie of the Feoffor or Donor, or of their heires, for that the Tenancie is char-

¶ VPon theſe two Sections is to be obſerued a diuerſitie betweene a right, for the which the Law giueth a remedie by Action, and a title for the which the Law giueth no remedie by Action, but by entry onely. For example, The Feoffee vpon Condition in this caſe hath a right to the Land, therefore his entry may be taken away, becauſe he may recouer his right by Action, but the Feoffor or Donor that hath but a Condition, his title of entrie cannot be taken away by any diſcent, becauſe he hath no remedie by Action to recouer the Land, and therefore if a Diſcent ſhould take away his entrie, it ſhould barre him for euer. And the Law is all one whether the diſcent were before the condition broken, or after. 33.Aſſ.11.24. 21.H.6.17. 33.Aſſ.11.24.

Alſo

Brooke tit. Mortmaine 6. 47. E. 3. 11. 21. E. 3. 17.

40. Ass. 13.

Also he that hath a title to enter vpon a Mortmain, shall not be barred by a discent, because then he should bee without al remedie. And so it is in case where a woman that hath a title to enter, causa matrimonij prælocuti, no discent shall take away her entrie, because she hath but a title, and no remedie by Action.

If a man be seised of lands in fee, and by his last will in writing deuiseth the same to another in fee, and dieth, after whose decease the Freehold in Law is cast vpon the deuisee, the heire before any entrie made by the Deuisee, entreth, and dieth seised, this shall not take away the entrie of the Deuisee, for if the discent, which is an Act in Law, should take away his entrie, the Law should barre him of his right, and leaue him vtterly without remedie. And so it is for him that entreth for consent to a rauishment, & so it was resolued in the case of Martyn Trotte of London, (n) Paschæ 32. El. in Com Banco. And accordingly was the opinion of the Court of Common Pleas, (o) Pasch. 1. Ia. Reg. To this may bee added as a like case, the Kings Patentes before he enter, &c. Another reason wherefore a discent shall not take away the entrie of him that hath a title to enter by force of a condition, &c. is, for that the Condition remaines in the same essence that it was at the time of the creation of it, and cannot be deuested or put out of possession as lands and tenements may.

(n) Pasch. 32. Eliz. in communi Banco. 7. R. 2. Scir. Fac. 3. 41. E. 3. 14. per Finchden.

(o) Pasch. 1. Iac. Regis in Com. Banco.

Et charge oue le condition, et lestate del Tenant est conditionall en quecunque mains que le Tenãcie vient, &c.

ged with the Condition, and the state of the Tenant is conditionall, in whose hands soeuer that the tenancie commeth, &c.

Sect. 392.

¶ Item si tiel tenant sur condit soit disseisie et le disseisor deuie ent seisie, & la tt̃ descendist al heire le disseisor, ore le entrie le tenant sur condition, que fuist disseisie est toll: Mes vncore si le condition soit enfreint, donque poet le Feoffor ou le Donor que fierent estate sur condition, ou lour heirs entrer, Causa qua supra.

ALso if such Tenant vpon Condition be disseised, and the Disseisor die therof seised, and the land discend to the Heyre of the Disseisor, now the entrie of the Tenant vpon condition, who was disseised, is taken away. Yet if the Condition be broken, the Feoffor or the donor which made the estate vpon condition, or their heirs may enter, *Causa qua supra.*

Section 393.

¶ Deuie seisie, &c. viz. in fee simple, or in fee tayle.

¶ Et son heire enter, &c. So as hee hath an actuall fee simple.

¶ De la 3. part de les tenements, &c. id est, in seueraltie.

By this Section it appeareth, that an entry being taken away by the Discent, is reuiued by the endowment, albeit the Tenant in Dower shall haue it but for her life. And the cause is, for that although the heirs entred, yet

¶ Item si vn disseisor deuie seisie, &c. & son heire enter, &c. le quel endowa la feme le disseisor d̃ la tierce part d̃ les tenements, &c. En cest cas quant a cest tierce part que est assigne a la feme en dower maintenant apres ceo que la feme enter, & ad le pos-

ALso if a Disseisor die seised, &c. and his heire enter, &c. who indoweth the wife of the Disseisor of the third part of the Land, &c. In this case as to this part which is assigned to the wife in Dower, presently after the wife entreth and hath the possession of the same third

poſſeſſion de meſme la tierce part, le diſſeiſee poit loyalment enter ſur la poſſeſſion le feme en meſme la tierce part. Et la cauſe eſt, pur ceo que quant la feme ad ſon dower, el ſerra adiudge eins immediate per ſon baron, & nemy per lheire, & iſſint quãt a le franktenement de meſme la tierce part, le diſcent eſt defeate. Et iſſint poies veir, que deuant le endowmẽt le diſſeiſee ne poit enter en aſcun part, &c. & apres le dowment il poit enter ſur la fee &c. mes vncore il ne poit enter ſur les auters deux parts que lheire le diſſeiſor ad per le Diſcent.

part, the diſſeiſee may lawfully enter vpon the poſſeſſion of the wife into the ſame third part. And the reaſon is for that when the Wife hath her dower, ſhee ſhall bee adiudged in immediately by her Husband and not by the heire. And ſo as to the Freehold of the ſame third part; the Diſcent is defeated. And ſo you may ſee that before the endowment the Diſſeiſee could not enter into any part, &c. and after the endowment hee may enter vpon the wife, &c. but yet hee cannot enter vpon the other two parts which the heire of the Diſſeiſor hath by the Diſcent.

when the wife is endowed ſhe ſhall not be in by the heire, (a) but immediately by her husband being the Diſſeiſor, which is in for her life by a Title Paramount the dying ſeiſed and diſcent, and therefore in iudgement of Law, the Diſcent as to the Freehold, and the poſſeſſion which the heire had is taken away by the endowment; for the Law adiudgeth no meane ſeiſin betweene the husband and the wife.

(a) 8.E.2.Entrie 75. 19.E.2.Dower 171. 5.E.2.Entrie 66. 24.E.3.32.40. 38.Aſſ.Pl.26.

43.E.3.32.45.E.3.9.b. 11.H.4.11. 7.H.5.3. 10.E.3.27.28. 36.H.6.Dower 30.

If there bee Lord, Meſne and Tenant, the Meſne doth grant to the Tenant to acquite him againſt the Lord and his heires, the Lord dies his wife hath the Seigniorie aſſigned to her for her dower, and diſtraines the Tenant; albeit the grant was only to acquite him againſt the Lord and his heires only, yet becauſe ſhe continued the eſtate of her husband, and the reuerſion remayned in the heire, the grant did extend to the wife, which is a notable caſe.

31.E.1.meſne 55.

If after the dying ſeiſed of the Diſſeiſor, the Diſſeiſee abate, againſt whom the wife of the Diſſeiſor recouer by confeſſion in a Writ of dower, in that caſe, though the Diſcent be anoyded as Littleton hers ſaith, yet the Diſſeiſee ſhall not enter vpon the Tenant in Dower, becauſe the recouerie was againſt himſelfe; but if he had aſſigned Dower to her in paiis, ſome ſay hee ſhould enter vpon her.

A man makes a gift in tayle reſeruing twentie ſhillings Rent, the Donee takes wife, and dieth without iſſue, the heire entreth and endoweth the wife, ſhee is ſeiſin of the eſtate of her husband, that albeit the eſtate tayle be ſpent, and the rent reſerued thereupon determined, yet after ſhe be endowed, ſhe ſhall be attendant to the heire in reſpect of the ſaid rent. And ſo it is of Lord and Tenant, the wife that is endowed, ſhall be attendant for the due Seruices, but if any ſeruices be incroached, albeit that incroachment ſhall bind the heire, yet the wife ſhall be contributary, but for the ſeruices of right due.

10.E.3.26.

¶ *Iſſint poies veir que deuant le dowment, le diſſeiſee ne poet enter, & apres lendowment il poet enter, &c.* The like hath beene ſaid before in this Chapter. Sect. 386. where the entry of the Diſſeiſee may be taken away for a time, and by matter ex poſt facto reuiued againe.

Nota, albeit the Diſſeiſor after a Diſcent taketh to him but an eſtate for life, yet when the Diſſeiſee doth enter vpon him, he ſhall thereby deueſt the Reuerſion, for the eſtate of Freehold is that whereupon a Præcipe doth lie, and therefore the entrie of the diſſeiſee is as auayleable in Law, as if he had recouered it in a Præcipe. And ſo it is if a Diſſeiſor make a Leaſe for life, and grant the Reuerſion to the King, the entrie of the Diſſeiſee vpon the Tenant for life ſhall deueſt the Reuerſion out of the King in the ſame manner, as if the Diſſeiſee had recouered the lands againſt the Tenant for life in a Præcipe.

Vid. Sect. 302. 388.

25.E.3.48. *Pl. Com.* 553.

Sect. 394.

¶ En ceſt caſe ieo poye enter ſur le poſſeſſion liſſue, &c.

Vide 9.H.7.24.& 37.H.6.1.

For here was but a Diſcent of a Remaynder at the time of the dying ſeiſed, for the ſtate of a Tenant by the curteſie, had cõmencement by the hauing of iſſue, and is conſummate by the death of the wife, ſo as a fee and franketenement did not after the deceaſe of the wife diſcend to the heire, and albeit the Tenant by the courteſie dieth afterwards, and the frankетenement is caſt vpon the heire, ſo as now hee hath the fee and frankетenement by Diſcent, yet becauſe the heire came not to the Fee and Frankетenement immediately after the deceaſe of the wife, ſuch a mediate Diſcent ſhall not take away the entrie of the Diſſeiſee. On the other ſide an immediate Diſcent may take away an entry for a time, and mediately may be auoyded by matter ex poſt facto as hath beene ſaid. But if a dying ſeiſed taketh not away the entry of him that right hath at the time of the Diſcent, it ſhall not by any matter ex poſt facto take away his entry.

¶ Item, ſi vn feme ſoit ſeiſie de terre en fee, dont ieo aye droit & title dentre, ſi la feme prent baron, & ont iſſue enter eux, et puis la feme deuie ſeiſie, & apres le baron deuie, et iſſue enter, &c. en ceſt cas ieo poy enter ſur le poſſ. iſſue, pur ceo que iſſue ne vient a les tenements immediate per Diſcent apres la mort ſa mere, &. eins per le mort del pier.

Also if a woman be ſeiſed of land in fee, whereof I haue right and title to enter if the woman take husband and haue iſſue betweene them, and after the wife die ſeiſed, and after the husband die, and the iſſue enter, &c. In this caſe I may enter vpon the poſſeſſion of the iſſue, for that the iſſue comes not to the lands immediately by Diſcent after the death of the mother &c. but by the death of the father.

¶ Contrarium tenetur P.9.Hen.7. per tout le court, & M.37. H.6. ¶.

¶ *Contrarium tenetur P.9.H.7. per tout le court, & M.37.H.6.* ¶.

See before the Chapter of Homage.

If a Diſſeiſor die without heire his wife primement enſeint with an iſſue, and after the iſſue is borne, who entreth into the Land, he hath the Land by Diſcent, and yet thereby the entry of the Diſſeiſee ſhall not be taken away, becauſe as Littleton here ſaith, the iſſue commeth not to the Lands immediately by Diſcent after the deceaſe of the Father.

And ſo it is if a Diſſeiſor make a gift in tayle, the remaynder in fee, and the Donee dyeth without iſſue leauing his wife primement enſeint with a Sonne, and he in the remaynder enter, and after the Sonne is borne, and entreth into the Land, this Diſcent ſhall not take away the entry of the Diſſeiſee, Cauſa qua ſupra.

¶ *Contrarium tenetur, &c.* This is an addition, and therefore to be paſſed ouer. And at this day this caſe of Littleton is holden for cleere Law.

Sect. 395.

¶ Item ſi vn diſſeiſor enfeoffa ſon pier en fee, & le pier muſt de tiel eſtate ſeiſie, per q̃ les tenits diſcendont a l' diſſeiſor come fits et heire &c. en ceſt caſe l' diſſeiſee bien poit enter ſur le diſſeiſor, nient obſtant le diſcent, pur

Also if a Diſſeiſor enfeoffe his father in fee, and the father die ſeiſed of ſuch eſtate, by which the Land diſcend to the Diſſeiſor, as ſonne and heire, &c. In this caſe the Diſſeiſee may well enter vpon the Diſſeiſor notwithſtanding the

pur ceo que quant al diſſeiſin, le diſſeiſor ſerra adiudge eins ſoꝛſque come diſſeiſoꝛ, nient obſtant le diſcent, Quia particeps criminis.

diſcent for that as to the diſſeiſin, the diſſeiſor ſhall bee adiudged in but as a diſſeiſor notwithſtanding the diſcent, *Quia particeps criminis.*

¶ Of this ſufficient hath beene ſaid beſoꝛe in this chapter Sect. 386. And regularly it is true that albeit a diſcent be caſt, and the entrie of the Diſſeiſee taken away, yet if the Diſſeiſoꝛ commeth to the land againe either by diſcent oꝛ purchaſe, of any eſtate oꝛ freehold which is implied in the (&c.) the Diſſeiſee may enter vpon him, oꝛ haue his aſſiſe againſt him, as if no diſcent oꝛ meane conueyance had beene, Quia particeps criminis.

15.E.4.23.a. 11.E.4.2. 18.E.4.25.a. 33.H.6.5.b. 34.H.6 11. 12.H.8.9. 24.H.8.3.9. 18.H.8.5. 5.H.7. 29.Aſſ.54. 39.E.3.25.26.

Sect. 396.397.

¶ Item ſi home ſeiſie de certaine terre en fee ad iſſue deux fits, & moꝛuſt ſeiſie, & le puiſne fits entra per abatement en la terre, quel ad iſſue, & de ceo moꝛuſt ſeiſie, et les tenements diſcendõt al iſſue, et l'iſſue entra en la terre, en ceſt caſe le fits eigne, ou ſon heire, poit enter p la ley ſur iiſſue del fits puiſne, nient contriſteant le diſcent, pur ceo que quant le fits puiſne abatiſt ẽ la terre apꝛes le moꝛt ſon pier deuãt aſcun entrie per le fits eigne fait, la ley intendꝛa que il entra enclaymant come heyꝛe a ſon pier, & p ceo que leigne fits claymia per meſme le title, ceſtaſcauoir, come heyꝛe a ſon pier, il & ſes heires poient enter ſur iiſſue de puiſne fits, nient obſtant le diſcent, &c. pur ceo que ils clay-

ALſo if a man ſeiſed of certaine land in fee haue iſſue two ſons, and die ſeiſed, and the younger ſonne enter by abatement into the land and hath iſſue, and dieth ſeiſed thereof, and the land diſcend to his iſſue, and the iſſue enters into the land. In this caſe the eldeſt ſonne or his heire may enter by the law vpon the iſſue of the younger ſon notwithſtanding the diſcent, becauſe that when the younger ſon abated into the land after the death of his father before any entrie made by the eldeſt ſonne, the law entend that hee entred clayming as heire to his father. And for that the eldeſt ſonne claimes by the ſame title, that is to ſay, as heire to his father, he and his heires may enter vpon the iſſue of the younger ſon notwithſtãding the diſ-

¶ EN *ceſt caſe le fits eigne, &c. poet entrer ſur liſſue del fitz puiſne, &c.* And the reaſon hereof is for that the law intendeth the youngeſt ſonne entred clayming the land as heire to his father, and becauſe the eldeſt ſonne claymeth alſo by the ſame title viz as heire to his father, therefoꝛe hee and his heires may enter vpon the ſecond ſonne and his heires in reſpect of the vnitie of the bloud betweene them, and of the ſame clayme by one title, albeit the youngeſt ſonne gained a fee ſimple by his entrie: foꝛ Littleton here calleth it an abatement, which pꝛoueth the gaining of a fee ſimple.

And it is to bee obſerued that Aſſiſa mortis anteceſſoris non tenet inter coniunctas perſonas ſicut fratres & ſorores, &c. foꝛ theſe are vnite in bloud but it lyeth againſt ſtrangers, and then damages are to bee recouered againſt a ſtranger, but not againſt his bꝛother.

Bract. lib.4.fo.261.282.283. Britton fo.180.181. Fleta lib.5.ca.1.2.&c. 20.E.3.Darr.preſent 13. 12.H.3. Mord.p.ultimo. 13.E.1.Mord.47 29.Aſſ.11.F.N.B.196.b.

Lands were giuen to the huſband and wife, and to the heires of their two bodies they had iſſue a daughter, the wife died, the huſband had iſſue by another wife foure ſons and dyed, the eldeſt ſonne abate

Paſch.3.E.3. Coram Rege Kanc.in Toriſaur.

abated and died ſeiſed, this diſcent did take away the entrie of the daughters becauſe they claymed not by one title. And in ancient bookes the eldeſt ſonne is called Hæres propinquus, and the younger ſonne Hæres remotus. And albeit the eldeſt ſonne hath iſſue and dieth, and after his deceaſe the youngeſt ſonne or his heire entreth, and many diſcents bee caſt in his line, yet may the heires of the eldeſt enter in reſpect of the priuitie of the blood, and of the ſame clayme by one title; but if the youngeſt ſonne make a feoffment in fee, and the Feoffee dis ſeiſed, that diſcent ſhall take away the entris of the eldeſt in reſpect the priuity of the blood falleth. And admit that the youngeſt ſonne be of the halfe blood to his brother, yet he is of the whole blood to his father, and therefore if he entreth and dieth ſeiſed, it ſhall not barre his elder brother of his entrie. But if the eldeſt ſonne entreth, and gaineth an actuall poſſeſſion and ſeiſin, then the entrie of the youngeſt is a diſſeiſin. And then a dying ſeiſed ſhall take away the entrie of the eldeſt, for Poſſeſsio terræ muſt bee Vacua when the youngeſt ſonne enter by abatement as Littleton ſaith, becauſe hee hath more colour in that caſe to clayme as heire to his father who laſt was actually ſeiſed. Therefore if after the deceaſe of the father an eſtranger doth firſt enter and abate, vpon whom the youngeſt ſonne entreth and diſſeiſe him and dis ſeiſed, this diſcent ſhall not binde the eldeſt, for he entred by diſſeiſin and not by abatement.

E.E.2. Aſſ.380.
40.E.3.24.b. 29.Aſſ.24

Vid. Brooke tit. Entrie 27.

If a man be ſeiſed of

mont per vn meſme title. Et en meſme le maner il ſerra, ſi fueront pluſors diſcents de vn iſſue a vn anter iſſue del puiſne fits.

cent, &c. becauſe they claime by the ſame title. And in the ſame manner it ſhall be, if there were more diſcents from one iſſue to another iſſue of the younger ſonne.

Sect.397.

MEs en tiel caſe, ſi le pier fuit ſeiſie d certaine terres en fee, et ad iſſue deux fits, et deuie, et leigne fits enter, & eſt ſeiſie, &c. et puis le puiſne frere luy diſſeiſiſt, per quel diſſeiſin il eſt ſeiſie en fee, et ad il eſt ſeiſie en fee, et ad iſſue, & de tiel eſtat mozuſt ſeiſie, donques leigne frere ne poit entrer, mes eſt mis a ſon briefe, Dentre ſur diſſeiſin, &c. de recouerer la terre. Et la cauſe eſt, pur ceo que le puiſne frere vient a les tenemẽts per tozcious diſſeiſin fait a ſon eigne frere, et per cel tozt la ley ne poit entender que il claime come heire a ſon pier, nient pluis que vn eſtrange perſon que vſt diſſeiſie leigne frere q̃ nauoit aſcun title, &c. Et iſſint poyes veier la diuerſitie, lou le puiſne frere enter apres le mozt le pier deuant aſcun entrie fait

BVt in this caſe if the father were ſeiſed of certaine lands in fee, and hath iſſue two ſons and die, and the eldeſt ſonne enter & is ſeiſed, &c. and after the yonger brother diſſeiſeth him, by which diſſeiſin he is ſeiſed in fee, and hath iſſue, and of this eſtate dieth ſeiſed, then the elder brother cannot enter, but is put to his Writ of *Entrie ſur diſſeiſin, &c*, to recouer the land. And the cauſe is for that the youngeſt brother commeth to the lands by wrongfull diſſeiſin done to his elder brother, and for this wrong the law cannot entend that he claimeth as heire to his father, no more then if a ſtranger had diſſeiſed the elder brother which had no title, &c. And ſo you may ſee the diuerſitie where the younger brother entereth after the death of the father before any entrie made by

per

per leigne frere en tiel cas, et ou leigne frere enter apres la mort son pier, et puis est diſseisie p le puisne frere, lou le puisne frer̃ puis mort ſeisie.

the elder brother in this caſe, and where the elder brother enters after the death of his father, and after is diſſeiſed by the younger brother, where the younger after dieth ſeiſed.

lands of the nature of Burgh Engliſh and hath iſſue two ſonnes and die, and the eldeſt ſonne before any entry made by the youngeſt entereth into the land by abatement and dieth ſeiſed, this ſhall not take away the entrie of the youngeſt brother. Et ſic de ſimilibus. And theſe and the like caſes are all within the reaſon and rule of our Author. And where our Author ſpeaketh only of an abatement, ſo it is of an intruſion, For if the father make a Leaſe for life and hath iſſue two ſonnes and dieth, and the Tenant for life dieth, and the youngeſt ſonne intrude, and die ſeiſed, this diſcent ſhall not take away the entrie of the eldeſt. But if the father had made a Leaſe for yeares it had beene otherwiſe, for that the poſſeſſion of the Leſſee for yeares maketh the actuall freehold in the eldeſt ſonne. And it is to be obſerued that the reaſon of Littleton in this caſe (for that both brethren hold by one title) holdeth alſo in many other caſes.

If two Coperceners make partition to preſent be turne, and one of them vſurpe in the turne of the other, this vſurpation ſhall not put the other out of poſſeſſion becauſe they claime by one title. 22.E.4.4.

If two Coperceners be, and they ſeuerally preſent to the Ordinary, yet the Church is not litigeous, becauſe they claime all by one title. Dalton. & Stud.ca.30.fo.117

If vpon a Writ of Diem clauſit extremum, the youngeſt ſonne be found heire, the eldeſt ſon had no remedy by the Common Law becauſe they claymed by one title, but otherwiſe it is if they claime by ſeuerall titles as it appeareth in our bookes. But this is now holpen by a (*) Statute made ſince Littleton wrote. 12.E.4.18. (*) 2.E.6.cap.8.

If two perſons be in debate for tithes, which amount aboue the fourth part, and one man is Patron of both Churches, no Iudicauit doth lye, for that both incumbents clayme by one and the ſame Patron, Et ſic de ſimilibus. 2.H.7.12.a. See the Sollicitment following.

And where Littleton ſaith, ſeiſed of lands in fee, the ſame law it is if a man be ſeiſed of lands in taile, and hath iſſue two ſonnes Mutatis mutandis.

¶ *Et eſt ſeiſie, &c.* (That is to ſay) actually ſeiſed either by entrie as Littleton here putteth it, or by poſſeſſion of the Leſſee for yeares or the like.

¶ *Nauoit aſcun title, &c.* That is to ſay, any pretence or ſemblance of title, as the younger brother here hath, and in many other caſes there is a great diuerſity holden in our bookes (o) where one hath a colour or pretence of right, and when he hath none at all; whereof you may reade plentifully in our bookes.

(o) 2.E.2.baſtard.19. 21.E.3.34. 22.Aſſ.85. 39.E.3.26. 17.E.3.59. 11.E.3.Aſſ.38. 21.H.6.14. 11.E.3.c.3. Vid.Sect.400.& ſeq Garran.

Sect. 398.

¶ EN meſme le maner eſt, ſi home ſeiſie de certaine tre en fee ad iſſue deux files & deuie, leigne file entra en la terre claymant tout la terre a luy, et ent ſolemẽt prist les profits, et ad iſſue & mort ſeiſie, per que ſon iſſue enter, quel iſſue ad iſſue & deuie ſeiſie, & le ſecond iſſue enter, *& ſic vltra*, uncore le puisne file ou ſon iſſue, quant a le moitie poyt enter ſur quecunque iſſue de leigne file, nient obſtant tiel diſcent,

IN the ſame manner it is, if a man ſeiſed of certaine land in fee hath iſſue two daughters & dieth, the eldeſt daughter entereth into the land clayming all to her, and thereof only taketh the proffits, and hath iſſue and dieth ſeiſed, by which her iſſue enter, which iſſue hath iſſue and dieth ſeiſed, and the ſecond iſſue enter, *& ſic vltra*, yet the younger daughter or her iſſue as to the moity may enter vpon any iſſue whatſoeuer of the elder

diſcent, pur ceo que ils claimont per vn meſme title, &c. mes en tiel caſe ſi ambideux Soers auoyent enter apres la mort lour Pier, et ent fueront ſeiſies, et puis leigne Soer vſt diſſeiſie la puiſne Soer de ceo que a luy affiert, et ent fuit ſeiſie en fee et ad iſſue, et de tiel eſtate morust ſeiſie, per que les Tenements diſcendont al Iſſue del eigne Soer, donque le puiſne Soer, ne ſes heires ne poient enter, &c. Cauſa qua ſupra, &c.

daughter notwithſtãding ſuch diſcent, for that they claime by one ſame title, &c. but in ſuch caſe where both ſiſters haue entred after the death of their father, and were therof ſeiſed, and after the eldeſt ſiſter had diſſeiſed the yonger of her part, & was thereof ſeiſed in Fee, and hath Iſſue, and of ſuch Eſtate dieth ſeiſed, whereby the lands diſcend to the Iſſue of the elder ſiſter, then the younger Siſter nor her heires cannot enter, &c. *Cauſa qua ſupra, &c.*

21. Aſſ. 19. 21. E. 3. 7. 27. 32. 26. Aſſ. 2. 27. Aſſ. 48. 36 aſſ. p. 1. 43. E. 3. 19. 4. H. 7. 10. 16. H. 7. 4.

¶ *Claimont tout la terre.* Here it appeareth, That when the one Coparcener doth ſpecially enter, claiming the whole land, and taking the whole profits, that ſhe gaines the one moitie, viz. of her ſiſter by abatement, and yet her dying ſeiſed ſhall not take away the entrie of her ſiſter, whereas when one Coparcener enters generally, and taketh the profits, this ſhall be accounted in Law the entrie of them both, and no diueſting of the moitie of her ſiſter.

See more of this in the chapter of Warrantie, Sect. 710.

If one Coparcener enter claiming the whole, and make a Feoffement in Fee, and take back an eſtate to her and her heires, and hath Iſſue and die ſeiſed, this diſcent ſhall take away the entrie of the other ſiſter, becauſe by the Feoffement the priuitie of the Coparcenarie was deſtroyed.

28. Aſſ. 30. Vi. Sect. 710.

¶ *Claimont per vn meſme title, &c.* Of this ſufficient hath bin ſaid in the next precedent Section.

¶ *Ne poient enter, &c.* Of this there hath beene alſo ſpoken in the ſame Section.

Section 399.

Pl. Com. 57. 39. E. 3. *Le darreine caſe.*

¶ *Eiſie en fee.* For this holds not in caſe of an eſtate tatle.

Li. 8. fo. 101. 102. *Sir Rich. Leebfords caſe.*

¶ *Mulier, ſeu filius mulieratus.* *Mulier* hath three ſignifications; Firſt Sub nomine mulieris continetur quælibet Fœmina. Secondly, Propriè ſub nomine mulieris continetur Virgo. Thirdly, Appellatione mulieris in legibus Angliæ continetur Vxor. Et ſic filius natus vel filia nata exiuſta vxore appellatur in Legibus Angliæ filius mulieratus ſeu filia mulierata, a ſonne mulier, or a daughter mulier, Sicut Baſtardus dicitur à Græco verbo Baſſaris, i. Meretrix, ſeu Concubina, quia procreatur ex meretrice ſeu

Glanu. li. 7. ca. 2. Bract. li. 5. ca. 19. Brit. ca. 70.

Vi. Sect. 188.

¶ Item ſi home eſt ſeiſie de certaine Terre en fee, et ad iſſue deux fits, et leigne fits eſt Baſtard, et l'puiſne freſt eſt mulier, et le Pier deuie, et le Baſtard enter enclaimant cõe heire a ſon pier, & occupia la terre tout ſa vie ſans aſcun entre fait ſur luy per l'mulier, et le Baſtard ad iſſue et morust ſeiſie de tiel eſtate en fee, et

Alſo if a man bee ſeiſed of certaine Lands in Fee, and hath Iſſue two Sonnes, and the elder is a Baſtard, and the younger *Mulier*, and the father die, and the Baſtard entreth claiming as heire to his Father, and occupieth the Land all his life, without any entrie made vpon him by the *Mulier*, and the Baſtard hath Iſſue and dieth ſeiſed

et la Terre discendit a son Issue, et son Issue enter, &c. En ceſt caſe le mulier eſt saums remedie, Car il ne poit enter, ne auer aſcun Action pur recouerer la Terre, pur ceo que eſt vn antient Ley en tiel caſe vſe, &c.

of ſuch eſtate in Fee, and the Land diſcend to his Iſſue, & his iſſue entreth, &c. In this caſe the *Mulier* is without remedie, for he may not enter, nor haue any Action to recouer the lād, becauſe there is an antient Law in this caſe vſed, &c.

concubina. In English he is called baſe borne, and thereupon ſome ſay, That a Baſtard is as much to ſay as one that is a Baſe Naturall, for Aërd ſignifieth Nature. I read in Fleta, (p) That there be three kind of Baſtards, viz, Manſer, Nothus, & Spurius, which are deſcribed in two old verſes,

(p) *Flet. lib. 1. ca. 5. & Sect. 380.*

Manſeribus ſcortum, Notho mœchus dedit ortum.
Vt ſeges è ſpica, ſic Spurius eſt ab amica.

But we terme them all by the name of Baſtards, that be borne out of lawfull marriage. By the Common Law, (r) if the husband be within the foure Seas, that is, within the Iuriſdiction of the King of England, if the wife hath Iſſue, no proofe is to be admitted to prooue the child a Baſtard, (for in that caſe, Filiatio non poteſt probari) vnleſſe the husband hath an apparant impoſſibilitie of procreation, as if the husband be but eight yeares old, or vnder the age of procreation, ſuch Iſſue is Baſtard, albeit hee be borne within marriage. (ſ) But if the Iſſue be borne within a moneth or a day after marriage betweene parties of full lawfull age, the child is legittimate.

(r) *Bract. li. 4. fo. 278. 279. 7. H. 4. 9. 43. E. 3. 19. 41. E 3 7. 44. E. 3. 10. 29. Aſſ. 54. 98. Aſſ. 24. 1. H. 6. 7. 19. H. 6. 17. 39. E. 3. 13.*
(ſ) *18. E. 4. 28.*

¶ *Diſcendiſt a ſon Iſſue.* For if the Baſtard dieth ſeiſed without Iſſue, and the Lord by Eſcheat entreth, this dying ſeiſed ſhall not barre the Mulier, becauſe there is no diſcent. If the Baſtard enter, and the Mulier dieth, his wife trauerſeth: enſeint with a ſonne, the Baſtard hath iſſue and dieth ſeiſed, the ſonne is borne, his right is bound for euer. But if the Baſtard dieth ſeiſed, his wife enſeint with a ſonne, the Mulier enter, the ſon is borne, the Iſſue of the Baſtard is barred: for Littleton putteth his caſe, that there muſt not onely be a dying ſeiſed, but alſo a diſcent to his Iſſue.

¶ *Et ſon iſſue enter, &c.* And ſo it is to be vnderſtood, albeit the Mulier after the deceaſe of the Baſtard doth enter before the heire of the Baſtard, for the diſcent bindeth, and not the entrie of the heire.

¶ *Le mulier eſt ſans remedie.* Hereby it appeareth, that this diſcent differeth from other diſcents, for this diſcent barreth the right of the Mulier, whereas other diſcents doe take away the entrie onely of him that right hath, and leaueth him to his Action, but here by the dying ſeiſed of the Baſtard, his Iſſue is become lawfull heire. (a) It is holden that if the Mulier be within age at the time of the dying ſeiſed, that he ſhall be barred, becauſe the Iſſue of the Baſtard is in iudgement of Law become lawfull heire, and that the Law doth preferre Legitimation before the priuiledge of Infancie.

Lib. 8. 101. 102. Sir Rich. Lechford's caſe.

(a) *5. E. 2. Diſcent Br. 49. 31. Aſſ. 18. 22. 33. E. 3. Verdict 48. 36. Aſſ. 2. Pl. Com. Stowel's caſe. 10. E. 3. 2.*

And the reaſon of this caſe is, for that Iuſtum non eſt aliquem poſt mortem facere baſtardum qui toto tempore vitæ ſuæ pro legitimo habebatur. And ſo it ſeemeth to be, That if a man hath iſſue a ſonne being Baſtard eigne, and a daughter, and the daughter is married, the father dieth, the ſonne entreth and dieth ſeiſed, this ſhall barre the Fems Court. And the diſcent in this caſe of Seruices, Rents, Reuerſions expectant vpon Eſtates Taile, or for life, whereupon Rents are reſerued, &c. ſhall bind the right of the Mulier, but a diſcent of theſe ſhal not bynd them that right haue to an Action.

13. E. 1. Br. Baſtard, 28.

14. E. 2. Baſtardy 36.

So if the Baſtard dieth ſeiſed, and his Iſſue entreth the lands of the Baſtard, yet is not the entrie of the Mulier lawfull vpon the Tenant in Dower, for his right was barred by the diſcent.

Sir Ric. Lechford's caſe vb. ſup.

If the Baſtard eigne entreth into the land and hath Iſſue, and entreth into Religion, this diſcent ſhall barre the right of the Mulier.

20. H. 3. Baſtardy 29.

¶ *Adiſſue deux fits.* If a man hath Iſſue ſuch a Baſtard as is aforeſayd, and dieth, and the Baſtard entreth and dieth ſeiſed, and the Land diſcendeth to his Iſſue, the Collaterall heyre of the Father is bound as well as where there be two ſonnes.

Hil. 18. E. 3. ou. Reg. Rot. 144 Ebor.

And where our Author ſpeaketh of ſonnes, ſo it is if a man hath Iſſue two daughters, the eldeſt being a Baſtard, and they enter and occupie peaceably as heires, vſed the Law in honour of Legitimation ſhall not adiudge the whole poſſeſſion in the Mulier, (who then had the entry right, but in both, ſo as if the Baſtard hath iſſue and dieth, her iſſue ſhal inherit. (b) And in the

17. E. 3. 59. F. tit. Baſtard. 32 Sir Rich. Lechford's caſe vb. ſup. See afterwards in the Chapter of Warranties.
(b) *2. E. 3. tit. Baſtardie 19.*

21.E.3.34.b. 30. Aſſ.p.7. Sir Rich. Lechfords caſe vbi ſup. (c) Brit.ca.70.

the ſame caſe if both daughters enter and make partition, this partition ſhall bind the Mulier for euer.

(c) And an Aſſiſe of Mordanceſter lieth not betweene the Baſtard and the Mulier in reſpect of the priorinitie of blood.

And the Baſtard being impleaded or vouched ſhall haue his age.

19.E.3.Voush.139. 21.E.3. Age 3. 5.H.7.2. Sir Rio. Lechfords caſe vbi ſup.

¶ *Et le Baſtard enter come heire a ſon pier.* If a man hath Iſſue Baſtard eigne and Mulier puiſne, and the Baſtard in the life of the father hath Iſſue and dieth, and then the father dieth ſeiſed, and the ſon of the Baſtard entreth as heire to his grandfather, and dieth ſeiſed, this ſhall bind the Mulier.

¶ *Pur ceo que eſt antient Ley en tiel caſe vſe, &c.* As hereafter in our Comment vpon the two next Sections ſhall appeare by our antient Bookes and the antient Statutes of the Realme. And here is implied how neceſſarie it is after the example of our Author, to looke into the Antiquities, than which, nothing is more venerable, profitable, and pleaſant.

Section 400.

¶ MES il ad eſtre lopinion daſcuns, que ceo ſerra intendue lou l' pier ad vn fits baſtard per vn feme, et puis eſpouſa meſm̃ la feme et apres leſponſels il ad iſſue per meſme la feme vn fits, ou vn file mulier, et puis le pier mozuſt, &c. ſi tiel Baſtard enter, &c. et ad Iſſue et deuie ſeiſie, &c. donque auera liſſue de tiel Baſtard le Terre cleerement a luy, come auant eſt dit, &c. et nemy aſcun auter baſtard la mere, que ne fuit vnque eſpouſe a ſon pier, et ceo ſemble bone et reaſonable opinion. Car tiel Baſtard nee deuant eſpouſels celebres perenter ſon pier et ſa mere, per la Ley de Saint Eſgliſe eſt mulier, coment que per la Ley del Terre il eſt Baſtard, et iſſint il ad vn colour dentrer come heire a ſon pier, pur ceo que il eſt per vn ley mulier, &c. ſ. per la Ley de Saint Eſgliſe. Mes autermt eſt de baſtard que nad aſcun maner colour dentre come heire, entant que il ne poet per nul Ley eſtre dit mulier, car tiel Baſtard eſt dit en la Ley, Quaſi nullius filius, &c.

BVt it hath beene the opinion of ſome, That this ſhall be intended where the father hath a ſonne Baſtard by a woman, and after marrieth the ſame woman, and after the eſpouſels he hath iſſue by the ſame woman a ſon or a daughter, and after the father dieth, &c. if ſuch Baſtard entreth, &c. and hath iſſue and die ſeiſed, &c. then ſhall the iſſue of ſuch baſtard haue the land cleerly to him, as it is ſaid before, &c. and not any other baſtard of the mother wch was neuer married to his father, and this ſeemeth to be a good and reaſonable opinion: for ſuch a baſtard borne before marriage celebrated between his father and his mother, by the law of holy church is *Mulier*, albeit by the law of the land he is a baſtard, & ſo he hath a colour to enter as heire to his Father, for that he is by one law *Mulier*, s. by Law of Holie Church. But otherwiſe it is of a Baſtard which hath no manner of color to enter as heire, inſomuch as he can by no law be ſayd to be *Mulier*, for ſuch a Baſtard is ſayd in the law to be *Quaſi nullius filius, &c.*

Mes

Mes ad eſte lopinion daſcuns, &c. And our Author here ſaith, That this opinion is good and reaſonable, for that ſuch a Baſtard by the Law of holy church (p) is a Mulier.

Matrimonium ſubſequens legitimos facit quoad ſacerdotium non quoad ſucceſſionem propter conſuetudinem regni quod ſe habet in contrarium. Yet the Canon Law holdeth them Legitimate, quoad ſucceſſionem. At a Parliament holden (q) Anno 20. H. 3. for that to certifie vpon the Kings writ, that the ſonne borne before marriage is a Baſtard, was Contra Communem formam Eccleſiæ, rogauerunt omnes Epiſcopi Magnates vt conſentirent, quod nati ante matrimonium eſſent legitimi ſicut illi qui nati ſunt poſt matrimonium quantum ad ſucceſſionē hæreditariam quia Eccleſia tales habet pro legitimis: Et omnes Comites & Barones vna voce reſponderunt, Quod nolunt Leges Angliæ mutare, quæ huc vſque vſitatæ ſunt & approbatæ.

(p) *Vide Britton fol. 128 b. 166. 203. And the Statute of Merton. 20. H. 3. cap. 9. confirmeth this opinion. Hill 18. E. 3. coram Rege in Theſaur. Ebor.*

(q) *Statut. de Merton 20. H. 3. cap. 9. Vide Bract. lib. 5. fo. 416. 417. 10. Aſſ. pl. 20. Bracton lib. 2 fol. 63.*

Iſſint que il ad vn colour dentre, &c. Here it is to obſerued, That the Law more reſpecteth him that hath a Colourable title, though it be not perfect in Law, than him that hath no title at all, as hath beene ſayd (r) before.

(r) *Vide Sect. 397. & cap. garr. Sect.*

Section 401.

MEs en le caſe auantdit, lou le Baſtard enter apres la mort le pier, et l'mulier luy ouſta, et puis le Baſtard diſſeiſist le mulier, et ad iſſue, et deuie ſeiſie, et iſſue enter, dõq̃ le mulier poit auer briefe Dentre ſur diſſ. enuers iſſue del Baſtard et recouera la terre, &c. Et iſſint poies veir le diuerſitie lou tiel Baſtard continue la poſſ. tout ſa vie ſans interruption & lou le mulier enter & interrupt le poſſeſſion de tiel baſtard, &c.

BVt in the caſe aforeſaid, where the Baſtard enter after the death of the father, and the mulier ouſt him, and after the Baſtard diſſeiſe the mulier, and hath iſſue and dieth ſeiſed, and the iſſue enter, then the mulier may haue a Writ of *Entrie ſur diſſeiſin* againſt the iſſue of the Baſtard, & ſhall recouer the Land, &c. And ſo you may ſee a diuerſitie where ſuch Baſtard continues the poſſeſſion all his life without interruption, and where the mulier entreth, and interrupts the poſſeſſion of ſuch Baſtard, &c.

CEt *le mulier luy ouſta.* An eſtrãger in the name of the Mulier without his commandement cannot enter vpon the Baſtard, for that the Baſtard may gaine the eſtate and bar the Mulier. And therefore regularly none ſhall enter but the Mulier, or ſome other by his commandement. (And therefore Littleton ſaith, and the Mulier put him out) no more then in the caſe (a) of the Lord Awdley: for an eſtranger of his owne head cannot enter in the name of him that right had to enter within the fiue yeares to auoid the Fine. But in both thoſe caſes, firſt, if the Mulier agree thereunto before the diſcent of the Baſtard; or ſecondly, he that right hath before the fiue yeares be paſt do aſſent thereunto, the clayme is good, and ſhall auoid the eſtate of the Baſtard, and of the Conuſee as it was holden in the Lord Awdleyes Caſe, Quia omnis ratihabitio retrotrahitur, & mandato equiparatur, and ſtandeth well with the words of the Statute, ſo that they purſue their title, &c. by way of Action or Entry, and ſo it is (b) 31. H. 8. to be intended.

(a) *Mich. 38. & 39. Eliz. in the Kings Bench vpon euidence by the whole Court. Vide 31. H. 8. entr. conge. Br. 123.*

4. H. 7. cap.

But in the caſe of the Baſtard eigne, which is Littletons caſe, Gardein in Socage, or Gardeine in Chiualrie may enter, for they are no ſtrangers, as in another place is plainly ſhewed. If an Infant make a feoffment in fee, an eſtranger of his owne head cannot enter (c) to the diſe of the Infant, for the eſtate is voidable. But where the Infant or a man of full age is diſſeiſed, an entrie by a ſtranger of his owne head is good and veſteth preſently the right in the Infant. So it is if Tenant for life make a feoffment in fee, an eſtranger may enter in the name of him in the Reuerſion, and thereby the eſtate ſhall be veſted in him, Et ſic de ſimilibus.

(b) *Vide Sect. 334. 31. H. 8. entr. conge. Br. 123.*

(c) *Paſch. 39. Eliz. in Cõmun Banco per Curiam. 10. H. 7. 16 7. E. 3. 69. 26. E. 3. 62. per Thorp. 45. E. 3. release 28. 11. Aſſ. 11.*

C Lou

¶ *Lou tiel Baſtard continue tiel poſſeſſion ſans interruption.* If the Mulier entreth vpon the Baſtard, and the Baſtard recouereth the Land in an Aſſiſe againſt the Mulier, now is the Interruption anoyded, and if the Baſtard dieth ſeiſed, this ſhall barre the Mulier.

2. Aſſ. 9. If the Baſtard eigne after the deceaſe of the father entreth, and the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, for which no Freehold or Inheritance is loſt, but only the profits of the Land by way of ſeiſure, and the Baſtard die, and his Iſſue is vpon his Petition reſtored to the poſſeſſion, for that the ſeiſure was without cauſe, the mulier is barred for euer, for the poſſeſſion of the King when hee hath no cauſe of ſeiſure ſhall bee adiudged the poſſeſſion of him for whoſe cauſe he ſeiſed. But if after the death of the Father the mulier be found heire and within age, and the King ſeiſeth, in that caſe the poſſeſſion of the King is in right of the mulier, and veſteth the actuall poſſeſſion in the mulier, and conſequently the Baſtard eigne is forecloſed of any right for euer.

And ſo it is when the King ſeiſeth for a contempt or other offence of the Father or of any other Anceſtor, in that caſe if the Iſſue of the Baſtard eigne vpon a Petition be reſtored for that the ſeiſure was without cauſe, the mulier is not barred, for the Baſtard could neuer enter, and conſequently could gaine no eſtate in the Land, but the poſſeſſion of the King in that caſe ſhall bee adiudged in the right of the mulier. And it is to bee obſerued, that the Baſtard muſt enter in vacuam poſſeſſionem, and muſt continue during his life without interruption made by the Mulier.

Pl. Com. Perſon de Hemlanes caſe 91. 35. H.6.24. 21. H.6.9. 1. E.4.3.21. E.4.5.5. E.4.60

¶ *Interrupt le poſſeſſion del Baſtard, &c.* If the Baſtard inuite the mulier to ſee his Houſe, and to ſee Pictures, &c. or to dine with him, or to Hawke, Hunt, & Sport with him, or ſuch like vpon the Land diſcended, & the mulier commeth vpon the Land accordingly, this is no interruption becauſe he came in by the conſent of the Baſtard, and therefore the comming vpon the Land can be no treſpaſſe, but if the mulier commeth vpon the ground of his owne head, and cutteth downe a tree or diggeth the ſoyle, or take any profit, theſe ſhall be interruptions, for rather then the Baſtard ſhall punith him in an Action of Treſpaſſe, the ſame ſhall amount in Law to an Entry, becauſe he hath a right of Entrie. So it is if the mulier put any of his beaſts into the ground or command a ſtranger to put on his beaſts, theſe do amount to an Entrie, for albeit in theſe caſes the mulier doth not vſe any expreſſe words of Entrie, yet theſe and ſuch like Acts doe without any words amount in Law to an Entrie, for Acts without words may make an Entrie, but words without an Act (viz.) Entrie into the Land, &c.) cannot make an Entrie (all which interruptions are implyed in the ſaid, &c.) More ſhall be ſaid hereafter of Interruptions in the Chapter of Continuall Clayme.

Sect. 402.

Brooke tit. diſcent 42.

¶ *Si vn enfant deins age ad cauſe dentrer.* If a man ſeiſed of Lands in fee die, his wife priuement enſeint with a ſon, and a ſtranger abate and die ſeiſed, and after the ſonne is borne, hee ſhall bee bound by the Diſcent, becauſe hee at the time of the Diſcent had no right to enter, & this is to be gathered vpon theſe words of Littleton, ad cauſe dentrer, which at the time of the Diſcent he had not.

20. H.6.28.b. 21.E.4.25.26. 15.E.4.diſcent.30.

¶ *Eſt eins per Diſcent, &c.* Here is implyed any other heire collaterall or lineall.

(d) Vide Sect.259.401. An Infant is accounted in Law (as hath beene often ſaid, (d) vntill hee paſſeth the

¶ Item, ſi vn enfant deins age ad tiel cauſe de entry en aſcuns terres ou tenements ſur vn auter, que eſt ſeiſie en fee, ou en fee taile de meſme les terres ou tenements, ſi tiel home que eſt tielment ſeiſie, morust de tiel eſtate ſeiſie, et les terres diſcendont a ſon iſſue, durant le temps que lenfant eſt deins age, tiel diſcent ne tollera lentry

ALſo if an Infant within age hath ſuch cauſe to enter into any Lands or Tenements vpon another which is ſeiſed in fee, or in fee tayle of the ſame Lands or Tenements if ſuch man who is ſo ſeiſed, dieth of ſuch eſtate ſeiſed, and the Lands diſcend to his Iſſue, during the time that the Infant is within age, ſuch Diſcent ſhall not take away the entrie of the

lentry lenfant, mes ſi il poit enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adiudge en vn enfant deins age en tiel caſe.

Infant, but that hee may enter vpon the iſſue which is in by diſcent, for that no laches ſhall bee adiudged in an Infant within age in ſuch a caſe.

age of 21. yeares, and certaine priuiledges hee hath in reſpect of his infancie.

¶ *Nul Laches ſerra adiudge en le Infant deins age in tiel caſe.*

And Littleton well added (en tiel caſe) that is, in caſe of Diſcent, for in ſome other Caſes Laches ſhall preiudice an Infant. As Laches ſhall be adiudged in an Infant if hee preſent not to a Church within ſixe monethes, for the Law reſpecteth more the Priuiledge of the Church, that the Cure be ſerued, than the Priuiledge of Infancie. And ſo the publique Repoſe of the Realme concerning mens Freehold and Inheritance ſhall be preferred before the priuiledge of Infancy in caſe of a fine where the time begin, in the time of the Anceſtor. So non-clayme of a Villaine, of an Infant by a yeare and a day, which hath fled to an ancient Demeſne, ſhall take away the ſeiſure of the Infant. And if an Infant bring not an Appeale of the death of his Anceſtor within a yeare and a day, he is barred of his appeale for euer, for the Law reſpects more Libertie and Life, than the Priuiledge of Infancie. And here it is to be obſerued, that Littleton putteth his caſe, that an Infant ſhall enter vpon a Diſcent, when a ſtranger dyeth ſeiſed, but her put it not ſo before, in the caſe of the Baſtard eigne. B. Tenant in tayle infeoffeth A. in fee, A. hath iſſue within age and dyeth, B. abateth and dyeth ſeiſed, the Iſſue of A. being ſtill within age, this Diſcent ſhall bind (e) the Infant, for the Iſſue in tayle is remitted: and the Law doth more reſpect an ancient right in this caſe, than the priuiledge of an Infant that had but a defeaſible eſtate. And it is ſaid (f) that if the King dye ſeiſed of Lands, and the Land diſcend to his Succeſſor, this ſhall bind an Infant, for that the priuiledge of the Infant in this caſe holds not againſt the King.

33.E.3. quer. imp. 46.

Pl.Com. 372.

(e) 11.E.4.1.2. F.N.B.35.m.

(f) 35.H.6 60.

Sect. 403.

¶ Item, ſi le baron & ſa feme come en droit la feme, ont title & droit denter en tenements que vn auter ad en fee, ou en fee taile, et tiel tenant morust ſeiſie, &c. en tiel caſe lentrie le baron eſt tolle ſur lheire que eſt eins per diſcent. Mes ſi le baron deuie, donque la feme bien poit enter ſur liſſue que eſt eins per diſcent, pur ceo que Laches le baron ne turnera la feme ne ſes heires en preiudice ne en dammage

ALſo if Husband and Wife, as in right of the wife haue title and right to enter into Lands which another hath in fee, or in fee tayle, and ſuch tenant dieth ſeiſed, &c. In ſuch caſe the entrie of the Husband is taken away vpon the heire which is in by Diſcent: but if the Husband die, then the wife may well enter vpon the Iſſue which is in by Diſcent, for that no Laches of the husband ſhal turne the wife or her heires to any preiudice, nor loſſe

¶ *Si baron & feme come en droit ſa feme ont title & droit dentrer, &c. & tiel tenant moruſt ſeiſie, &c.*

Theſe words are generall, but are particularly to bee vnderſtood, viz. when the wrong was done to the wife during the Couerture, for if a Feme ſole be ſeiſed of Lands in fee, and is diſſeiſed, and then taketh husband, In this caſe the husband and wife, as in the right of the wife, haue right to enter, and yet the dying ſeiſed of the diſſeiſor in that caſe ſhall take away the entry of the wife after the death of her husband, and the reaſon is aſwell for that ſhee herſelfe when ſhee was ſole, might haue entred and recontinued the poſſeſſion, as alſo it ſhall bee accounted her folly that ſhee would take ſuch a husband which would not enter before the Diſcent.

9.H.7.24.4.2.E.4.25. 7.E.4 7.b. 20.H.6.28.b. 42.E.3.12.

15.E.4 diſcent. 30.

9.H.7.24.

But if the woman were within age at the time of the taking of husband, then the dying ſeiſed ſhall not after the deceaſe of her huſband take away her Entrie; becauſe no folly can be accounted in her, for that ſhee was within age when ſhe tooke huſband, and

en tiel cas, mes que la fem & ſes heirs bñ poient enter, ou tiel diſcent eſt eſchue durant le couerture.

in ſuch caſe, but that the wife & her heires may well enter where ſuch Diſcent is eſchued during the Couerture.

after Couerture ſhe cannot enter without her huſband, all which is implyed in the ſaid (&c.)

Vid. Sect.402.

¶ *Laches le Baron ne turnera la fem, &c. al preiudice, &c.* Laches (ſignifieth in the Common Law, rechleſneſſe or negligence, Et negligentia ſemper habet infortunii comitem) Here is a diuerſitie to be obſerued that albeit regularly no Laches ſhall be accounted in Infants or Feme Couerts as is aforeſaid, for not Entry or Clayme to anoyde Diſcents, yet Laches ſhall be accounted in them for not performance of a Condition annexed to the ſtate of the Land. For if a Fem be infeoffed eyther before or after marriage, reſeruing a Rent, and for default of payment a re-entrie. In that caſe the Laches of the Baron ſhall diſherit the wife for euer. And ſo it is (n) of an Infant his Laches, for not performing of a Condition annexed to a ſtate, eyther made to his Anceſtor or to himſelfe ſhall barre him of the right of the Land for euer.

20.H.6.28.b.
(n) 31.Aſſ.p.17.
42.E.3.1. Pl. Com.55.
10.H.7. 13.H.7.

If a man make a feoffment in fee to another reſeruing a Rent, and if he pay not the Rent within a moneth, that he ſhall double the Rent, and the Feoffee dieth, his heire within age, the Infant payeth not the Rent, he ſhall not by this Laches forfeit any thing. But otherwiſe it is of a Feme Couert, and the reaſon and cauſe of this diuerſitie is, for that the Infant is prouided for by the Statute, (o) Non current vſuræ contra aliquem infra ætatem exiſten' &c. But that Statute doth not extend to a Feme Couert, neither doth that Statute extend to a Condition of a re-entrie, which an Infant ought to performe, for the forfeiture thereof cannot be called Vſura.

35.H.6.41. Pl.Com.236.b.
Fleta lib.2.cap.50.

(o) Laſtatute de Merton ca.5

Sect. 404.

¶ *Mes la Court tient, ou tiel title eſt done al feme ſole, que puis prent baron, que nentra pas, eins ſuffer vn Diſcent, &c. la auter eſt, car ſerra dit la folly le feme de prender tiel baron que nentre en temps, &c. *

BVt the Court holdeth where ſuch title is giuen to a fem ſole who after taketh husband which doth not enter, but ſuffer a Diſcent, &c. there otherwiſe it is. for it ſhall be ſaid the folly of the wife to take ſuch a husband which entered not in time, &c.

9.H.7.24.

¶ This is added, and therefore as formerly I haue done I meddle not withall, howbeit the opinion is holden for Law, as it appeareth in the Section next precedent.

Section 405.

¶ HEre Litl. explaneth a man of no ſound memory to be Non compos mentis. Many times (as here it appeareth) the Latyn word explaneth the true ſence, and calleth him not Amens, demens, furioſus, lunaticus, ſatuus, ſtultus, or the like, for Non compos mentis is moſt ſure and legall.

Pl.Com.fo.368.b.per Sanders Lib.4.fo.127.182. Beuerleys caſe. Mirror cap.1.§ 9.ea.5. § 1. Bracton fo.165.& 420 Britton fo.167.b.217.66. Fleta l.6 ca.39. Fitz.N.B. 222.b. Staunf. Prer.33.34.

Non compos mentis is

¶ Item, ſi home que eſt de non ſane memory, que eſt adire en Latin, Qui non eſt cõpos mentis, ad cauſe dentre en aſcuns tiels tenements, ſi tiel diſcent vt ſupra, ſoit ewe en ſa vie, durant le temps que il fuit de non

ALſo if a man which is of non ſane memory, that is to ſay in Latyn, *Qui non eſt compos mentis*, hath cauſe to enter into any ſuch tenements, if ſuch diſcent, *vt ſupra*, bee had in his life during the time that hee was not of ſound

non ſane memorie, & puis deuia, ſon heire bien poit enter ſur luy que eſt eins p diſcent. Et en ceſt caſe poyes veier vn cas, q̃ lheire poiet enter, & vncore ſon anceſter que auoit meſme le title ne puiſſoit enter. Car celuy que fuit hors de ſa memorie al temps de tiel diſcent, ſil voile enter apres tiel diſcent, ſi action ſur ceo ſoit ſue enuers luy, il nad riẽs pur luy a pleder, ou de luy ayder, mes adire que il fuit de non ſane memorie al temps de tiel diſcent, &c. & a ceo ne ſerra il reſceiue adire, pur ceo que nul home ỏ pleine age ſerra reſceiue en aſcun plee per la ley a diſabler ſa perſon demeſn̄, mes lheire bien poit diſabler le perſon ſon auncеſter pur ſon aduantage demeſne en tiel cas, pur ceo q̃ nul laches poit eſtre adiudge per la ley en celuy que ad nul diſcretion en tiel caſe.

memory, & after dieth, his heire may well enter vpon him which is in by diſcent. And in this caſe you may ſee a caſe where the heire may enter, and yet his Anceſtor which had the ſame title could not enter. For hee which was out of his memory at the time of ſuch diſcent if he will enter after ſuch a diſcent, if an action vpon this be ſued againſt him, he hath nothing to pleade for himſelfe or to help him, but to ſay, that hee was not of ſane memory at the time of ſuch diſcent, &c. And he ſhall not bee receiued to ſay this, for that no man of full age ſhall be receiued in any plea by the law to diſable his owne perſon, but the heire may well diſable the perſon of his Anceſtor for his owne aduantage in ſuch caſe, for that no laches may bee adiudged by the law in him which hath no diſcretion in ſuch caſe.

of foure ſorts; 1. Ideota which from his nattuity by a perpetuall infirmity is Non compos mentis. 2. Hee that by ſickneſſe, griefe or other accident wholly loſeth his memory and vnderſtanding. 3. A Lunatique that hath ſometime his vnderſtanding and ſometime not, Aliquando gaudet lucidis interuallis, and therefore he is called Non compos mentis ſo long as he hath not vnderſtanding. Laſtly, he that by his owne vitious act for a time depriueth himſelfe of his memory and vnderſtanding, as he that is drunken. But that kinde of Non compos mentis ſhall giue no priuiledge or benefit to him or his heires. And a diſcent ſhall take away the entrie of an Ideot, albeit the want of vnderſtanding was perpetuall; for Littleton ſpeaketh generally of a man of non ſane memory. So likewiſe if a man that become Non compos mentis by accident as is aforeſaid be diſſeiſed and ſuffer a diſcent, albeit hee recouer his memory and vnderſtanding againe, yet he ſhall neuer auoide the diſcent; and ſo it is a fortiori of one that hath Lucida interualla. As for a drunkard, who is Voluntarius dæmon, hee hath (as hath beene ſaid) no priuiledge thereby, but what hurt or ill ſoeuer hee doth, his drunkenneſſe doth aggreuate it; Omne crimen ebrietas & incendit & detegit.

Lib.4.124.125. Beuerleys caſe

If an Ideot make a feoffment in fee, he ſhall in pleading neuer auoide it, ſaying that he was an Ideot at the time of his feoffment, and ſo had beene from his nattuity. But vpon an office found for the King, the King ſhall auoide the feoffment for the benefit of the Ideot whoſe cuſtodie the Law giueth to the King.

39.H.6.42.b. Abb. Aſſ.89.b. F.N.B.202. 5.E.3.70. Britton ca.28 fo.66. 25.Aſſ. pl.4 33.Aſſ.pl.10.

Soit is of a Non compos, and ſo it is of him Qui gaudet lucidis interuallis, of an eſtate made during his Lunacie: for albeit the parties themſelues cannot be receiued to diſable themſelues, yet twelue men vpon the Office may find the truth of the matter. But if any of them alien by fine or recouerie, this ſhall not onely bind himſelfe, but his heires alſo. As amongſt other things requiſite to be knowne, theſe caſes you ſhall finde at large in my Commentaries whereunto for breuity I referre the reader, Vpon all which bookes there haue beene foure ſeuerall opinions concerning the alienation or other act of a man that is Non compos mentis, &c. For

32.E.3.tit.Scire fac. 160. Stanf.Pr.34. F.N.B.202.e

Beuerleys caſe lib.4.126.127 128.

Vid. Br. vit. Dum fuit infra ætatem. 5.

firſt ſome are of opinion that he may auoyde his owne act by entrie or plea. Secondly, Others are of opinion, That he may auoyd it by writ, and not by plea. Thirdly, Others, That hee may auoyd it either by plea or by writ, and of this opinion is Fitzherbert in his Natura Breuium vbi ſupra. And Littleton here is of opinion, That neither by Plea nor by writ or otherwiſe, hee himſelfe ſhall auoyd it, but his heire in reſpect his Anceſtor was Non compos mentis, ſhall auoyd it by entrie plea, or writ: And herewith the greateſt authorities of our Bookes agree, and ſo was it reſolued with Littleton, in Beuerleys caſe, (r) where it is ſayd, That it is a Maxime of the Common Law, That the partie ſhall not diſable himſelfe. But this holdeth onely in Ciuile Cauſes, for in Criminall Cauſes, as Felonie, &c. the act and wrong of a mad man ſhall not be imputed to him, for that in thoſe cauſes, Actus non facit reum, niſi mens ſit rea, and he is Amens (id eſt) ſine mente, without his mind or diſcretion; and Furioſus ſolo furore punitur, a mad man is onely punished by his madneſſe. And ſo it is of an Infant vntill he be of the age of fourteene, which in Law is accounted the age of diſcretion.

(r) *Lib.4.fo.126.127.*

26.Aſſ.27. 21.H.7.31. Stanford 16.b. 8.E.2.Coron 412.414.351. 22.E.3. ibid. 224. Beuerleys caſe vbi ſupra F.N.B.202.D. 3.H.7.2. Vid.3.E.3.tit. Entrie Cong. Statham 12.E.4.8. 39. H.6.4. Abbr. Aſſ.89. 39.H.6.43.

¶ *Et en ceſt caſe poyes veir vn caſe, &c.* And though Littleton ſaith, (One caſe) yet other caſes may be found to the ſame end. For if there be Grandfather, Father, and Sonne, and the Father diſſeiſe the Grandfather, and make a Feoffement in Fee, without warrantie, the grandfather dieth, albeit the right diſcend to the father, he cannot enter againſt his owne Feoffement, but if he die, the ſonne ſhall enter, and auoyd the eſtate of the Feoffee.

15.E.4.tit. Diſcent.30.

So if the Grandfather be Tenant in Taile, and the father diſſeiſe him vt ſupra, mutatis mutandis.

If Lands be giuen to two and to the heires of one of them, he that hath the Fee ſimple ſhall not haue an action of waſt vpon the Statute of Glouceſter, againſt the Ioyntenant for life, but his heire ſhall maintaine an Action of waſt againſt him, vpon the Statute of Glouceſter, ſo the heire ſhall maintaine that Action which the Anceſtor could not.

Sect. 406.

¶ **E ſi tiel home ô non ſane memorie fait Feoffement, &c. il meſm̃ ne poet enter ne auer briefe appelr** Dum non fuit compos mentis, &c. cauſa qua ſupra, **Mes apres la mort ſon hẽ bien poit enter, ou auer le dit Brieſe** Dum non fuit compos mentis **a ſon election. Meſme la Ley eſt lou enfant deins age fait Feoffement, et deuie, ſon heire poit enter, ou auer vn Brieſe de** Dum fuit infra ætatem, &c.

And if ſuch a man of Non ſane memorie make a Feoffement, &c. he himſelfe cannot enter, nor haue a Writ called *Dum non fuit compos mentis, &c. cauſa qua ſupra*: but after his death his Heire may well enter, or haue the ſayd Writ of *Dum non fuit compos mentis* at his choice. The ſame Law is where an Infant within age maketh a feoffment and dieth, his heire may enter or haue a Writ of *Dum fuit infra ætatem, &c.*

¶ *Fait feoffement, &c.* Or any other like conueyance in paijs, but Fines and other aſſurances of Record are not implied in this, (&c).

¶ *Meſme la ley dun Enfant.* This is true, as to the bringing of a Dum fuit infra ætatem, &c. but without queſtion the Infant in that caſe might haue entred, as it appeareth in the next Section.

¶ *Briefe* Dum non fuit compos mentis. This writ (as it appeareth by our Author) lieth for the heire of him that was Non compos mentis, and not for himſelfe, but a Dum fuit infra ætatem lieth as well for the Anceſtor himſelfe after his full age, as for his heire.

Sect.

Sect.407.

¶ Item ſi ieo ſue diſſeiſie per vn enfant deins age, le quel aliena a vn auter en fee, et lalienee deuie ſeiſie, et les Tẽts diſcendont a ſon heire, eſteant lenfant deins age, mon entry eſt tolle, &c.

ALſo if I be diſſeiſed by an Enfant within age, who alieneth to another in Fee, and the Alienee dieth ſeiſed, and the lands diſcend to his heire being an Infant within age, my entrie is taken away. &c.

Sect.408.

Mes ſi lenfant deins age ent ſur lhẽe que eſt eins p diſcent, come il bien poit pur ceo q̃ meſme le diſcent fuit durant ſon nonage, donque ieo bien puiſſe enter ſur le diſſeiſor, pur ceo que p ſon entrie il ad defeat & anient le diſcent.

BVt if the Infant within age enter vpon the heire which is in by diſcent, as he well may, for that that the ſame diſcent was during his Nonage, then I may well enter vpon the Diſſeiſor, becauſe by his entrie he hath defeated and taken away the diſcent.

¶ HEre it appeareth, That the entrie of the Infant is lawfull, and gineth advantage to the Diſſeiſee to enter alſo, becauſe the diſcent, whith was the impediment, is annoyded. And it is to be obſerued, That if the diſcent bee caſt, the Infant being within age, he may enter at any time of his full age.

And ſo it is if an Infant make a Feoffement, &c. he may enter either within age, or at any time after his full age, and ſo in both caſes may his heire.

Vi. the next Sect. following. 43.E.3. tit. Entr. Cong. Vet.N.B.126.b. F.N.B.192. 45.E.3.21.

Sect. 409.

¶ EN meſme le manner eſt, lou ieo ſue diſſeiſie, et le diſſeiſor fait feoffement en fee ſur condit, et le Feoffee mor de tiel eſtate ſeiſie, ieo ne purroy my enter ſur lhẽe le feoffee: mes ſi le condition ſoit enfreint, iſſint q̃ pur cel cauſe le Feoffor entee ſur lheire, ore ieo bñ puiſſe enter, pur ceo que quãt le Feoffor ou ſes heires entront pur le condition enfreint, le diſcent eſt outterãt defeat, &c:

IN the ſame manner it is where I am diſſeiſed, and the Diſſeiſor make a feoffmẽt in fee vpon condition, and the feoffee die of ſuch eſtate ſeiſed, I may not enter vpon the heire of the Feoffee, but if the Condition be broken, ſo as for this cauſe the feoffor enter vpon the heire, now I may well enter, for that when the Feoffour or his heires enter for the condition broken, the Diſcent is vtterly defeated, &c.

¶ THe reaſon hereof is apparant, for Ceſſante cauſa ceſſat cauſatum. Tenant in Capite maketh a Feoffment in fee to the vſe of the Feoffee and his heires, vntill the Feoffor pay an hundred pounds to him or his heires, the Feoffee dieth his heire within age, now hath the King the wardſhip of the bodie, and is intituled to the gard of the land. But if the Feoffor pay the hundred pounds according to the limitation, the wardſhip is diuerted, both for the body and land, and ſo it is in caſe of a condition: for as Littleton here ſaith, the diſcent which is the cauſe of wardſhippe, is vtterly defeated. And by theſe two laſt caſes which Littleton hath here put, it appeareth, That there is no difference where the diſcent is diſaffirmed by a right Paramount, where the ſtate was neuer laſtly

V. the Sect. next precedent. Dyer 13.El. fo.298,299.

lawfull, (as in the case of an Infant, and where the discent is affirmed for a time, the estate being lawfull) and after defeated by matter ex post facto, by a title of Re-entrie.

Section 410.

Vi. Sect. 200.

¶ *Entre en Religion, &c.* Heere is implied Profession. This discent shall not barre the entrie of the Disseisee, for that the discent commeth by the Deed of the Father, because hee entred into Religion, wherein there is an excellent poynt worthie of obseruation: For albeit the entrie into Religion make not the discent, but the profession, whereof you haue read before Sect. 200. Yet here you may learne by Littleton, That the Law respects the originall Act, and that is his entry into Religion, which is his owne Act whereupon the profession followed, whereby the discent hapned, for, Cuiusque rei potissima pars principium est. And againe, Origo rei inspici debet, whereof you shal make great vse in reading of our Bookes. *Here Lit. attributeth the cause of the discent to his entrie into Religion, which was his owns Act, whereas a discent doth not take away an entrie vnlesse it commeth by death, which, as Littleton saith, is the act of God, and no glorious pretext of an Act, no though it bee of Religion, shall worke a wrong to a stranger that hath right, to barre him of his entrie: But it is sayd, That in the case of the Bastard eigne and mulier puisne, such a discent shall bind the Mulier, as before hath beene sayd, and such an heire that commeth in by such a discent shall haue his age.

(*) V. Pl. Com. Dame Hales case. 6.E.3.41. &c.

10.E.3.55.

¶ *Mes pur ceo que tiel discēt vient al issue per fait le pier, &, pur ceo que il enter en Religion, &c. et le discent ne vient a luy per fait de Dieu, &, per mort, &c. mon entre est congeable. Car si ieo arraigne vn Assise de* Nouel Disseisin *enuers mon Disseisor, coment que il puit enter en religion, ceo ne abata my mon brē mes mō brē (c̄ non obstant) estoyera en sa force, et mon recouery vers luy serr̄ bon̄. Et per mesme le reason le discent que aueigne a son Issue per son fait demesn̄, ne tollera moy ō mon entrie, &c.*

¶ *Item si ieo soy disseisie, et le Disseisor ad issue et enter en Religion, per force de quel les Tenemēts discendōt a son issue, en cest case ieo bien puisse enter s̄ issue, et vncore la fuit vn discent.* Also if I bee disseised, and the disseisor hath Issue and entreth into Religion, by force whereof the lands discend to his issue, In this case I may well enter vpon the Issue, and yet there was a discent: but for that such discent commeth to the Issue by the Act of the father, s. for that he entred into Religion, &c. and the Discent came not vnto him by the Act of God, *(scilicet)* by death, &c. my entrie is congeable: for if I arraigne an Assise of *Nouel disseisin* against my disseisor, albeit he after enter into Religion, this shall not abate my Writ, but my writ (notwithstanding this) shall stand in his force, and my recouerie against him shall bee good. And by the same reason the discent which commeth to his Issue by his own Act, shal not take from me my entrie, &c.

3.H.6.41. 10.H.6.10.b. 18.E.4.19. 9.E.4.25.52. 7.E.4.15. 18.E.3.24. 25.E.3.39. 46.E.3.25. 10.E.2. *Brooke.* 885. *Bracton lib.* 4. *fo.* 189. & *Lib.* 5. *fo.* 414. 22.R.2. *Brooke* 936. 15.*Ass. pl.*8.

a man be Tenant or Defendant in a reall or personall Action, and hanging the suit, the tenant or defendant entreth into Religion, by this the writ is not abated, because it is by his owne Act. And so it is of a Resignation, but otherwise it is of a Deposition or deprivation, because he is expelled by iudgement, and yet his offence, &c. was the cause thereof, sed in præsumptione Legis iudicium redditur in inuitum.

¶ *Mey de mon entry, &c.* Here is implied, Or any of my heires, &c.

Sect. 411.

ITem ſi ieo leſſe a vn home certaine terres pur terme de 20. ans. & vn auter moy diſſeiſiſt, & ouſta le termor et deuie ſeiſie, et les tenements diſcendont a ſon heire, ieo ne purroy enter, et uncore l' leſſee pur terme dans bien puit enter pur ceo que il p̄ ſon entry ne ouſta lheir q̄ eſt eins p̄ diſcēt d̄ le frāktenemēt q̄ eſt a luy diſcēd̄ mes ſolement claime dauer les tenemēts pur terme dans, le quel neſt pas expulſemēt de le franktenement del heire que eſt eins per diſcent. Mes autrement eſt ou mon tenant a terme de vie eſt diſſeiſie, Cauſa patet, &c.

ALſo if I let vnto a man certain lands for the terme of twentie yeares, and another diſſeiſeth me, and ouſt the termor, and die ſeiſed, and the Lands diſcend to his heire: I may not enter, and yet the Leſſee for yeares may well enter, becauſe that by his entrie he doth not ouſte the heire who is in by Diſcent of the Freehold which is diſcended vnto him, but only claymeth to haue the Lands for tearme of yeares which is no expulſion from the freehold, of the heire who is in by Diſcent. But otherwiſe it is where my Tenant for terme of life is diſſeiſed, *Cauſa patet, &c.*

¶ *Vr terme de 20. ans.* It is clere that a Diſcent ſhall not take away the entry of a Leſſee for yeares as our Authour here ſaith, nor of a Tenant by Elegit, or Tenant by Statute Merchant or ſuch like, as haue but a Chattle and no Freehold, and the reaſon is for that by their entrie vpon the heire by diſcēt, they take no Freehold (which as often hath bin obſerued is ſo much reſpected in Law) from him, but otherwiſe it is of an eſtate for life, or any higher eſtate. And as a Diſcent of a Freehold and Inheritance ſhall take away the entry of him that right hath to a Freehold or Inheritance, ſo a Diſcent of a Freehold and Inheritance cannot take away the entry of him that hath but a Chattle, for that no Diſcent can be of the ſame.

A man ſeiſed of an aduowſon in fee, grants three anoydances one after another, and after the Church becommeth void, and the Grantor preſents, and his Clarke is admitted and inſtituted, and after the Church becomes void, the Grantee may preſent to the ſecond anoydance, for hee was not put out of poſſeſſion thereof, for as the Leſſor hauing the Freehold and Inheritance cannot diſſeiſe the Leſſe for yeares, hauing but a Chattle, that any Diſcent may be caſt to take away his entry as Littleton here ſayth: ſo in the ſaid caſe the Grantor hath the Franktenement and fee of the Aduowſon rightfully, ſo as he cannot make any vſurpation to gaine any eſtate, or to put the Grantee ſo out of poſſeſſion as he ſhould not preſent, no more then the Leſſee for yeares in this caſe to enter. Alſo in reſpect of the priuitie the vſurpation of the Grantor ſhall not put the Grantee out of poſſeſſion for the two latter anoydances. And this was reſolued (a) by all the Iudges of the Court of Common Pleas, which I my ſelfe heard and obſerued.

(a) *Hill. 18. Eliz. in Communi Banco.*

Sect. 412.

ITem il eſt dit, que ſi home eſt ſeiſie de tenements en fee per occupation en temps de guerre, & ent morust ſeiſie en

ALſo it is ſaid that if a man be ſeiſed of lands in fee by occupation in time of warre, and thereof dieth ſeiſed in the

¶ *Per occupation en temps de guerre.* Firſt, It is neceſſary to be knowne what ſhall bee ſaid Time of peace. Tempus pacis, and what ſhall bee ſaid, Tempus belli, ſiue guerræ, time of warre. Tempus pacis eſt quando

Inter breuia de anno 1.E.3. parte 1. & pasch. 28.E.3. inter adiudicata coram Rege. lib. 2. fol. 37. in thesaur. Pasch 39.E.3. inter adiudicata coram Rege in thesaur lib. 2. fol.92.

do Cancellaria & aliæ Curiæ Regis sunt apertæ quibus lex fiebat cuicunque prout fieri consueuit. And so was it adiudged in the case of Roger Mortimer, and of Thomas Earle of Lancaster. Vtrum terra sit guerrina necne, naturaliter debet iudicari per recorda Regis, & eorum qui curias Regis per legem terræ custodiunt & gubernant, sed non alio modo.

temps de guerre, et les tenements discendont a son heire, tiel discent ne oustera ascun home de son entry, et de ceo home poit vier en vn plee sur vn briefe de Aiel, An.7.E.2.

time of warre, and the tenements discend to his heire, such discent shall not oust any man of his entrie, and of this a man may see in a Plea vpon a Writ of Aiel, 7.E.2.

14 E.3. tit. fetre facias 122. but more fully in the Record at large.

And therefore when the Courts of Justice bee open, and the Judges and Ministers of the same may by Law protect men from wrong and violence, and distribute Justice to all, it is said to be time of peace. So when by Inuasion, Insurrection, Rebellions, or such like the peaceable course of Justice is disturbed and stopped, so as the Courts of Justice be as it were shut vp, Et silent leges inter arma, then is it said to be time of warre. And the triall hereof is by the Records and Judges of the Court of Justice, for by them it will appeare, whether Justice had her equall course of proceeding at that time or no, and shall not be tryed by Jury.

If a man be disseised in time of peace, and the Discent is cast in time of warre, this shall not take away the entry of the Disseisee.

Bracton. lib. 4. fo. 240.

Item tempore pacis quod dicitur ad differentiam eorum quæ fuerunt tempore belli quod idem est quod tempore guerrino, quod nihil differt à tempore iuris & iniuriæ, est enim tempus iniuriæ, cum fuerunt oppressiones violentæ quibus resisti non potest, & disseisinæ iniustæ.

So as hereby it also appeareth that time of peace is the time of Law and right, and time of warre is the time of violent oppression, which cannot be resisted by the equall course of Law. And therefore in all reall actions the expleas or taking of the profits are layed Tempore pacis, for if they were taken Tempore belli, they are not accounted of in Law.

Inglewm cap. de nouel disseisin.

¶ *Per Occupation.* Occupation is a word of art, and signifieth a putting out of a mans Freehold in time of warre, and it is all one with a disseisin in time of peace, sauing that it is not so dangerous as it appeareth by Littleton, and therefore the Law gaue a Writ in that case of Occupauit, so called by reason of that word in the Writ, in stead of

Lib. 4. fol. 49. 50. Ognels case. disseisiuit in the Assise of Nouel disseisin, if the disseisin had beene done in time of peace, whereby it appeareth how aptly both in this and in all other places, Littleton throughout his whole Booke speaketh. But albeit Occupatio whereof Littleton here speaketh is vsed only in the said Writ and in none other, that I can find or remember, yet hath it beene vsed commonly in Conueyances and Leases to limit or make certaine precedent words, as ad tunc in tenura & occupatione. But occupatio is applyed to the possession, bee it lawfull or vnlawfull; It hath also crept into some Acts of Parliament, as 4.H.7.cap.19.39.Eliz.cap.1. and others, and occupare is sometime taken to conquer.

¶ *Et de ceo home poet vier in vn plea sur briefe de Aiel, anno* 7.E.2. Hereby it appeares that ancient tearmes or yeares after the example of Littleton are to be cited and vouched, for confirmation of the Law, albeit they were neuer printed, and that those yeares, and those specially of E.1.H.3.&c. are worthy of the reading and obseruation: a great number of which I haue seene and obserued, which in mine opinion doe giue a great light not only to the vnderstanding and reason of the Common Law, and which Fitzherb. either saw not or were by him omitted, but also to the true exposition of the ancient Statutes made in those times, yet mine aduice is, that they should be read in their time: for after our Students be enabled and armed to set on our yeare bookes or reports of the Law, let him reade first the latter reports for two causes: First for that for the most part the latter Iudgements and Resolutions are the surest, and therefore it is best to season him with them in the beginning both for the settling of his iudgement, and the retayning of them in memory. Secondly, for that the latter are more facile and easier to be vnderstood, then the more ancient: but after the reading of them, then to reade these others before mentioned, and all the ancient Authors that haue written of our Law; for I would wish our Student to be a compleat Lawyer. But now to returne. As it is in case of discent, so it is in case of presentation, for no vsurpation in time of war putteth the right Patron out of possession, albeit the incumbent come in by institution and induction. And time of warre doth not only giue priuiledge to them that be in warre, but to all others within the kingdome, and although the admission and institution be in time of peace, yet if the presentment were in time of warre, it putteth not the right Patron out of possession.

6.E.3.41.7.E.3. dorr. pres. 2. 18.E.2 quar. imp. 175. F.N.B.31.

Sect.

Sect.413.

¶ Item que nul mozāt ſeiſie (ou les tenements vienmont a vn auter per ſucceſſion) tollera lentr̄ dalcun perſon, &c. Come de Prelates, Abbots, Prioꝛs, Deans, ou Parſon deſglíſe, ou q̄ auters coꝛps politike, &c, coment q̄ ils fuerent xx, mozants ſeiſie, et xx. ſucceſſoꝛs, ceo ne tolle iammes alcun home de ſon entrie.

¶ Plus ſerra dit de Diſcents en le prochein chapter.

ALſo that no dying ſeiſed (where the tenements come to another by ſucceſſion) ſhall take away the entrie of any perſon, &c. As of Prelates, Abbots, Pryors, Deanes, or of the Parſon of a Church or of other bodies politique, &c. albeit there were xx. dyings ſeiſed, and xx. ſucceſſors, this ſhall not put any man from his entrie.

More ſhall be ſaid of Diſcents in the next chapter.

¶ *PER ſucceſſion.* This is in the Common Law applyed only to bodyes Politiques or Corporate, which haue ſucceſſion perpetuall and not to naturall men, as to a Biſhop and his ſucceſſors, an Abbot, Deane, Archdeacon, Prebend, Parſon, &c. and their ſucceſſors, and not to I.S. or any other naturall body and his ſucceſſors, but to him and his heires. And the Succeſſor of any of theſe is in the Poſt and the heire of the naturall man is in the Per, and Succedere is deriued of Sub & cedere. *Vid. Sect. 1.* *7.E.3.25.a.5.E.3.13.& 31.*

¶ *Corps politique, &c.* This is a body to take in ſucceſſion framed (as to that capacity) by politicie, and thereupon it is called here by Littleton a body politique, and it is alſo called a Corporation or a body incorporate, becauſe the perſons are made into a body and of capacity to take and grant, &c. And this body politique or incorporate may commence and be eſtabliſhed three manner of wayes, viz. by preſcription, by Letters patents, or by act of Parliament. Euery body politique or Corporate is either Eccleſiaſticall or laye. Eccleſiaſticall either regular, as Abbots, Priors, &c. or Secular, as Biſhops, Deanes, Archdeacons, Parſons, Vicars, &c. Lay, as Maior and Communalty, Baylifes and Burgeſſes, &c. Alſo euery body Politique or Corporate, is either elective, preſentatiue, collatiue or donatiue. And againe is either ſole, or aggregate of many, as you may reade in the third part of my Commentaries. And this body Politique or Corporate, aggregate of many is by the Ciuilians called Collegium or Vniuerſitas. *Lib.3.fo.73. in the caſe of the Deane & Chapter of Norwich*

Chap.7. Continuall Clayme. Sect.414.

¶ Continuall clayme eſt la. lou hõe ad droit et title dentrer en alcuns terres ou tenemẽts dont auter eſt ſeiſie en fee, ou en fee taile, ſi ceſty que ad title dentrer fait continual claime a les

COntinual claim is where a man hath right and title to enter into any lands or tenements whereof another is ſeiſed in fee, or in fee taile, if hee which hath title to enter makes continuall claime to the lands or tenements be-

HEre our Author firſt deſcribeth what a continuall clayme is. It is called Continuum clameum, becauſe at the Common Law, it muſt haue beene made within euery yeare and day, as Littleton here teacheth. And yet if he that right hath maketh claime, and the Tertenant dyeth within the yeare and the day, this claime though it bee but once *Mirror cap.2.§.15.& §.18. Bracton lib.5.fo.435.436. Britton 107.b. 126.b. Fleta lib.6.cap.52.53. Vid.Sect.424.* *Vid.Sect.385.32.H.8.p.33.*

Vid.Sect.424.

once * made as hath beene ſaid ſhall preſerue the entrie of him that maketh the clayme.

¶ *Ad droit & title denter.* And yet in ſome caſes a continuall claime may bee made by him that hath right and cannot enter.

If Tenant for yeares, Tenant by Statute Staple, Marchant, or Elegit be ouſted, and he in the reuerſion diſſeiſed, the Leſſor or he in reuerſion may enter to the intent to make his clayme, and yet his entrie as to take any profits is not lawfull during the terme. And in the ſame manner the Leſſor or he in the reuerſion in that caſe may enter to auoyde a collaterall warrantie, or the Leſſor in that caſe may recouer in an Aſſiſe. And ſo ſome haue holden may the Leſſor doe in caſe of a Leaſe for life to this intent to auoid a Diſcent or a warrantie.

Dyer 19.Eliz. Tr. Com.374
15.H.7.3.4. Iacobins caſe.
28.H.6.28.

Vid.Sect.442.45.E.3.21.

If the Diſſeiſee make continuall clayme and the Diſſeiſor die ſeiſed within the yeare, his heire within age, and by office the King is intitled to wardſhip, albeit the entrie of the Diſſeiſee be not lawfull, yet may he make continuall clayme to auoide a diſcent, and ſo in the like.

7.H.6.40. Contin. Clayme 1.
Deunclericeſt. 5.E.4.4.

¶ *Vncore poet celuy que fait tiel clayme ou ſon heire enter.* This is to be vnderſtood in this manner, that if the father make claime, and the Diſſeiſor dyeth, the Father dyeth, his heire may enter, becauſe the diſcent was caſt in the fathers time, and the right of entrie which the Father gained by his claime ſhall diſcend to his heire. But if the Father make continuall clayme, and dyeth, and the Sonne make no continuall clayme, and within the yeare and day after the claime made by the Father the Diſſeiſor dieth, this ſhall take away the entrie of the Sonne, for that the diſcent was caſt in his time, and the clayme made by the Father ſhall not auaile him, that might haue claymed himſelfe. And of this opinion was Littleton himſelfe in our bookes where he holdeth that no continuall clayme can auoide a diſcent vnleſſe it be made by him that hath title to enter, and in whoſe life the dying ſeiſed was. See more of this matter hereafter in this chapter, Sect.416.

Bracton lib.5.fo.436.
Fleta, lib.5.cap.52.53.
22.H.6.37. 9.H.4.5.a.
15.E.4.22.a.

22.H.6.37.

And as here Littleton putteth his caſe of the Anceſtor and heire, ſo it holdeth in all reſpects of the Predeceſſor and Succeſſor.

terres ou tenements deuant l'mozant ſeiſie de celuy que tient les tenements, donqz coment q̃ tiel tenant mozuſt ent ſeiſi, & les terres ou tenements diſcendront a ſon heire, vncoze poit celuy que auoit fait tiel claime, ou ſon heire enter ẽ les terres ou tenements iſſint diſcendus, per cauſe de continual claim̃ fait, nient contriſtiant le diſcent. Sicome en caſe q̃ home ſoit diſſeiſie, & le diſſeiſee fait continual claime a les tenemẽts en la vie le diſſeiſor, comẽt que le diſſeiſor deuie ſeiſie en fee, & la terre diſcendiſt a ſon heire, vncoze poit le Diſſeiſee enter ſur la poſſeſſion le heire, nient obſtant le diſcent.

fore the dying ſeiſed of him which holdeth the tenements, then albeit that ſuch tenant dieth thereof ſeiſed, and the lands or tenements diſcend to his heire, yet may he who hath made ſuch continuall claime or his heire enter into the lands or tenements ſo diſcended by reaſon of the continual claim made, notwithſtanding the diſcent. As in caſe that a man be diſſeiſed and the diſſeiſee makes continuall claime to the tenements in the life of the diſſeiſor, although that the diſſeiſor dieth ſeiſed in fee and the land diſcend to his heire, yet may the Diſſeiſee enter vpon the poſſeſſion of the heire notwithſtanding the diſcent.

Sect. 415.

¶ Semesme l' manere est, si tenant a terme de vie alien en fee, celuy en le reuersion, ou celuy en le remainder poit enter sur lalienee, et si tiel alienee deuie seisi de tiel estate sans continual claime fait a les tenements deuant le mozant seisi del alienee, & les tenements per cause del mozant seisi del alienee, discendont a son heire, donques ne poit celuy en le reuersion, ne celuy en le remainder enter. Mes si celuy en le reuersion ou celuy en le remainder que ad cause dentre sur lalienee fait continual claime a les tenements deuant le mozant seisi del alienee, donques tiel hõe poit enter apres la mozt lalienee, auxybien come il puissoit en la vie.

¶ IN the same manner it is, if tenant for life alien in fee, hee in the reuersion or hee in the remainder may enter vpon the alienee. And if such alienee dieth seised of such estate without continuall clayme made to the tenements before the dying seised of the alienee, and the lands by reason of the dying seised of the alienee discend to his heir, then cannot he in the reuersion, nor hee in the remainder enter. But if he in the reuersion or in the remainder who hath cause to enter vpon the alienee make continuall clayme to the land before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life time.

¶ By this it appeareth, that a continuall claime may bee made aswell where the lands are in the hands of a Feoffee, &c, by title, as in the hands of a Disseisor, Abator, or Intruder by wrong, as before hath beene noted.

Sect. 416.

¶ Item si terr̃ soit lesse a vn home pur terme de sa vie, le remainder a vn auter a terme de vie, le remainder a le tierce en fee, si le tenant a terme de vie aliena a vn auter en fee, & celuy en le remainder pur terme de vie fait continual claime a la terre deuant le mozant seisie dalyenee,

ALso if land be let to a man for terme of his life, the remainder to another for terme of life, the remainder to the third in fee, if tenant for life alien to another in fee, and hee in the remainder for life maketh continuall claime to the land before the dying seised of the Alienee, and after the

¶ *Alien a vn auter in fee.* It is to be obserued that a forfeiture may be made by the alienation of a particular Tenant two manner of wayes, either In Pais, or by matter of Record.

In Pais, of lands and tenements which lye in Liuery (whereof Littleton intendeth his case) where a greater estate passeth by Liuery, then the particular Tenant may lawfully make, whereby the reuersion or remainder is deuested, as here in the example that Littleton putteth when tenant for life alieneth in

Vid. Sect. 581. 609. 610. 611.

in fee, which muſt bee vnderſtood of a feoffement, fine, or reconerie by conſent.

17.El.Dy.339.16.El. Di.324.

If Tenant for life, and hee in the remainder for life in Littletons caſe had ioyned in a Feoffement in fee, this had beene a forfeiture of both their eſtates, becauſe he in the remainder is particeps iniuriæ. And ſo it is if hee in the remainder for life had entred, and diſſeiſed Tenant for life, and made a Feoffement in fee, this had beene a forfeiture of the right of his remainder.

33.E.3.Deniſe 21.15.E.4.9. Vi.Sect.608.609.610.

A particular eſtate of any thing that lies in grant, cannot be forfeited by any grant in fee by Deed. As if tenant for life or yeares of an Aduowſon, Rent, Common, or of a reuerſion or remainder of land by Deed grant the ſame in fee, this is no forfeiture of their eſtates, for that nothing paſſes therby, but that which lawfully may paſſe, and of that opinion is Littleton in our Bookes.

35.H.6.62. Tr.32.El.in Exchequer. de intruſion vers Robinſon pur le Manor de Drayton Baſſit, reſolued by the Court of Exchequer.

But if Tenant for life or yeares, the reuerſion or remainder being in the King, make a Feoffement in fee, this is a forfeiture, and yet no reuerſion or remainder is diueſted out of the King, and the reaſon is in reſpect of the ſolemnitie of the feoffement by liuerie tending to the Kings diſherſion.

et puis lalienee moruſt ſeiſie, et puis apres celuy en le remainder pur terme de vie morust, deuaunt aſcun entrie fait per luy, en ceſ cas celuy en le remainder en fee, poit enter sur heire le alienee, per cauſe de continuall claim fait per luy que auoit le remainder pur terme de ſa vie, pur ceo que tiel droit que il aueroit dentre, alera et remaindera a celuy en le remainder aps luy, entant que celuy en le remainder en fee ne puiſſoit pas enter ſ alienee en fee durant la vie celuy en le remainder ꝑ terme de ſa vie, & pur ceo que il ne puiſſoit adonqz faire continual claim (car nul poit faire continual claim, mes quant il ad title dentrie, &c.)

alienee dieth ſeiſed, & after he in the remainder for life die before any entrie made by him, in this caſe he in the remainder in Fee may enter vpon the heyre of the Alienee by reaſon of the continuall claime made by him which had the remainder for life, becauſe that ſuch right as hee had of entrie, ſhall goe and remaine to him in the remainder after him, in ſo much as hee in the remainder in Fee, could not enter vpon the Alienee in fee during the life of him in the remainder for life, and for that hee could not then make continuall claime. For none can make continuall claime but when hee hath title to enter, &c.

By matter of Record, and that by three manner of waies: Firſt, By alienation. Secondly, by claiming a greater eſtate than he ought. Thirdly, By affirming the Reuerſion or Remainder to be in a ſtranger.

Firſt, By alienation, and that of two ſorts, viz. By alienation diueſting, and not diueſting the reuerſion or remainder. Diueſting, as by leuying of a fine, or ſuffering a common recouerie of lands, whereby the reuerſion or remainder is diueſted: not diueſting, as by leuying of a fine in fee of an Aduowſon, Rent, Common, or any other thing that lieth in grant: and of this opinion is Littleton in our Bookes,* and ſo note two diuerſities: Firſt, betweene a grant by fine which is of Record, and a grant by deed in paiis, and yet in this they both agree, That the reuerſion or remainder in neither caſe is diueſted. Secondly, Betweene a matter of Record, as a Fine, &c. and a Deed recorded, as a Deed inrolled, for that worketh no forfeiture, becauſe the Deed is the originall.

*15.E.4.9. 31.E.3.Gr.62. 14.E.3.3.Anow.117.

15.E.2.Iudr.237.6.E.3.49. 9.E.3.4.18.E.2 Fines 120. 15.E.4.29.36.H.6.29. 2.H.6.9. 4.El.Dy. 9.H.5. 14.22.Aſſ.31. 18.E.3.28. 16.Aſſ.16.

Secondly, By Claime, and that may be in two ſorts, either expreſſe or implied. Expreſſe, as if Tenant for life will in Court of Record claime fee, or if Leſſee for yeares be ouſted, and bring an Actie, Vt de libero Tenemento. Implied, As if in a writ of Right brought against him, he will take vpon him to ioyn the mile vpon the meere right, which none but Tenant in fe ſimple ought to doe. So if Leſſee for yeares loſe in a Præcipe, and bring a writ of Error in Error in Proceſſe, this is a forfeiture.

Thirdly

Thirdly, By affirming the reuerſion or remainder to be in a ſtranger, and that either actually or paſſiuely. Actually, by fiue manner of wayes. As firſt, if Tenant for life pray in aid of a ſtranger, whereby he affirmes the reuerſion to bee in him. Secondly, if hee atturne to a grant of a ſtranger, and there note alſo a diuerſitie betweene an Atturnement of Record to a ſtranger, and an Atturnement in paiis, for an Atturnement in paiis worketh no forfeiture. Thirdly, If a ſtranger bring a writ of Entrie in caſu prouiſo, and ſuppoſe the reuerſion to be in him, if the Tenant confeſſe the Action, this is a forfeiture. 4. if Tenant for life plead couinously to the diſherſion of him in the reuerſion, this is a forfeiture. Fifthly, if a ſtranger bring an Action of waſt againſt Leſſee for life, & he plead Nul waſt fait, this is a forfeiture: or the like.

21.E.3.14.a. 5.E.4.2. 24.H.8.Forf.Br.87.li.2.f.55 56.Bucklers caſe,27.E.3.77. 17.E.3.7.a. 39.E.3.16. 29.E.3.24.5.Aſſ.5. 5.E.3. Entr.Cong.42. 14.E.3.Receit 135. 3.E.3.32. 24.E.3.68. 1.H.7.

Sixthly, As if Tenant for life accept a fine of a ſtranger, ſur conuſans de droit come ceo, &c. for hereby he affirmes of Record the reuerſion to be in a ſtranger.

3.Mar.Dy.148.

Littleton here ſpeaketh of the forfeiture of an eſtate, and it is to be knowne, that the right of a particular eſtate may be forfeited, and he that hath but a right of a remainder or reuerſion, ſhall take benefit of the forfeiture. As if Tenant for life be diſſeiſed, and he leuie a fine to the Diſſeiſor, he in the reuerſion or remainder ſhall preſently enter vpon the Diſſeiſor for the forfeiture. And ſo it is if the Leſſee after the Diſſeiſin had leuied a fine to a ſtranger, though to ſome reſpects, Partes finis nihil habuerunt, yet is it a forfeiture of his right.

Li.2 fo.55.Bucklers caſe.

Littleton here ſpeaketh of an alienation in fee abſolutely, but ſo it is, if the Leſſee make a leaſe for any other mans life, or a gift in taile. If A. be Tenant for life, and make a Leaſe to B. for his life, and B. dieth, and the Leſſee re-entreth, yet the forfeiture remaineth.

13.E.4.4.

If Tenant for life make a leaſe for life, or a gift in Taile, or a Feoffement in Fee, vpon condition, and entreth for the condition broken, yet the forfeiture remaineth. Littleton ſpeaketh of an eſtate for life, ſo it is of Tenant in Taile apres poſſibilitie, Tenant by the Curteſie, tenant in Dower, or if he hath an eſtate to him and his heires, during the life of I. S. &c. and of tenant for yeares, Tenant by Statute Merchant, Statute Staple, or Elegit.

39.Aſſ.15. 43.E.3.Entrie Cong.30. 2.H.5.7. 39.E.3.16. 45.E.3.25.

Littleton ſaith, That the alienation in fee is made to another, which muſt bee intended a ſtranger, for if it be made to him in reuerſion or remainder, it amounts to a ſurrender of his eſtate, as at large hath beene ſpoken in the Chapter of Tenant for life.

By Littleton it appeareth, That Tenant for life may enter for the forfeiture of the firſt Tenant for life, and that if the Tenant for life in remainder make continuall claime, and the Alienee die ſeiſed, then may he enter, and if he die before he doe enter, he in the remainder in fee ſhall enter becauſe he in the remainder could not make any claime, therefore the right of entry which Tenant for life gained by his entrie, ſhall goe to him in the remainder, in reſpect of the priuitie of eſtate: and ſo it is of him in the reuerſion in fee in like caſe, for he is alſo priuie in eſtate.

If two Joyntenants be diſſeiſed, and the one of them make continuall claime and dieth, the ſuruiuor ſhall take benefit of his continuall claime, in reſpect of the priuitie of their eſtate.

But if Tenant for life make continuall claime, this ſhall not giue any benefit to him in the remainder, vnleſſe the Diſſeiſor died in the life of Tenant for life, for the cauſe aboue ſaid, Sectione 414.

If Tenant in Taile, the remainder in fee with garrantie, haue iudgement to recouer in value, and dieth before execution without iſſue, he in the remainder ſhall ſue execution, for he hath right thereunto, and is priuie in eſtate.

In the ſame manner if a Seigniorie be granted by fine to one for life the remainder in fee, the Tenant for life dieth, he in the remainder ſhall haue a Per quæ ſeruitia, for he hath right to the remainder, and is priuie in eſtate. Here alſo appeareth, That none can make continuall claime but he that hath right to enter.

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¶ Mes eſt a veier a toy (monſieur) gement et en ql maner tiel continual claime ſerra fait, et ceo bien appzender trois choſes ſont a intender. La 1. choſe eſt, ſi home ad cauſe

But it is to be ſeene of thee (my ſonne) how and in what manner ſuch continuall claime ſhall be made: and to learne this wel, three things are to bee vnderſtood. The firſt thing is, If a man hath

¶ *Si home ad cauſe dentrer en aſcuns terres ou tenements, &c.* It is not ſufficient to tell one generaly what he ſhold do, but to direct him how & in what manner he ſhall doe it, as Lit. doth in this place. And here the generall rules of our Author are to be vnderſtood, that the entrie of a man to recontinue his Inheritance or Free-

hold,

This hath beene adiudged Mich 14.& 15 Eliz. Rot.1458. in the Earle of Arundells case.

hold must ensue his Action for recouerie of the same. As if three men disseise me seuerally of three seuerall Acres of land, being all in one countie, and I enter in one acre in the name of all the three Acres, this is good for no more but for that Acre which I enter into, because each disseisor is seuerall Tenant of the Freehold, and as I must haue seuerall Actions against them for the recouerie of the land, so myne entrie must bee seuerall.

And so it is if one man disseise me of three acres of ground, and letteth the same seuerally to three persons for life, &c. there the entrie vpon one Lessee in the name of the whole, is good for no more than that Acre that he hath in his possession. But if the disseisor had letten seuerally the sayd three acres to three persons for yeares, there the entrie vpon one of the Lessees in the name of al the three acres, shall recontinue and reuest all the three acres in the disseisee, for that the disseisee might haue had one Assise against the Disseisor, because he remained Tenant of the Freehold, and therefore one entrie shall serue for the whole.

dentre en aſcuns terres ou Tenements que ſont en diuers Villes deins vn m̃ Countie, ſil enter en vn parcel de les terres ou Tenements que ſont en vn Ville, en noſme de touts ſes terres ou Tenements as queux il ad droit dentr̃ deins touts les Villes de meſme le Countie, per tiel entrie il auera auxy bone poſſeſſion, et ſeiſin d̃ touts terres ou tenements dont il ad title dentrie, ſicome il auoit enter en fait en cheſcun parcel, & ceo ſemble grand reaſon.

cauſe to enter into any Lands or Tenements in diuers Townes in one ſame Countrie, if he enter into one parcell of the lands or tenements which are in one Towne, in the name of all the Lands or Tenements into the which he hath right to enter, within all the Townes of the ſame Countie: By ſuch entrie hee ſhall haue as good a poſſeſſion and ſeiſin of all the lands and Tenements whereof he hath title of entrie, as if he had entred indeed into euery parcell; and this ſeemeth great reaſon.

7.Aſſ.18.12.E.4 10. 36.H. 6.27. 32.Aſſ.pl.1. If one diſſeiſe me of one acre at one time, and after diſſeiſe me of another acre in the ſame Countie at another time, in this caſe myne entrie into one of them in the name of both is good, for that one Aſſiſe might be brought againſt him for both Diſſeiſins.

11.H.7.25.Dyer 16.El.337. But if I infeoffe one of one acre of ground vpon condition, and at another time I infeoffe the ſame man of another acre in the ſame Countie vpon Condition alſo, and both the conditions are broken, an entrie into one acre in the name of both is not ſufficient, for that I haue no right to the land, nor action to recouer the ſame, but a bare title, and therefore ſeuerall entries muſt be made into the ſame, in reſpect of the ſeuerall conditions. But an entrie in one part of the land in the name of all the land ſubiect to one condition is good, although the parcels be ſeuerall, and in ſeuerall townes. And ſo note a diuerſitie betweene ſeuerall rights of entrie, and ſeuerall titles of entrie by force of a condition.

¶ *Deins meſme la Countie.* For if the lands lie in ſeuerall Counties, there muſt be ſeuerall Actions, and conſequently ſeuerall entries, as hath beene ſaid.

¶ *En noſme de tout, &c.* If one diſſeiſe me of two ſeuerall Acres in one Countie, and I enter into one of them generally, without ſaying, In name of both, this ſhall reuest onely that acre wherein entrie is made, as hath beene ſayd, and that is proued by our Bookes which ſay, That if I bring an Aſſiſe of two acres, if I enter into one hanging the writ, albeit it ſhall reuest that onely Acre, yet the writ ſhall abate.

5.H.7.7.4,E.4.19. 20.E.4.11.a.

¶ *Dont il ad title dentrie.* Here in a large ſence title of entrie is taken for a right of Entrie.

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¶ Car ſi home voile enfeoffer vn auter ſauns fait de certaine terres ou tenements, que il ad deins pluſours villes en vn Countie, & il voile liuerer ſeiſin al feoffee de parcel de tenements deins vn ville en noſme de touts les terres ou tenements que il ad en meſme le ville, & en les auters villes, &c. touts ſ̄s dits tenem̄ts, &c. paſſont per force de le dit liuery de ſeiſin a celuy a q̄ tiel feoffement en tiel maner eſt fait, & vncore celuy a que tiel liuery de ſeiſin fuit fait, nauoit droit en touts les terres ou tenements ē touts les villes, mes per cauſe d̄ liuery de ſeiſin fait de parcel de les terres ou tenements en vn ville: A multo fortiori il ſemble bone reaſon, que quant home ad title denter en les terres ou tenements en diuers villes deins vn m̄ County deuāt aſcun entry per luy fait, que per lentry fait p̄ luy en parcel de les terres en vn ville en le meſme de touts les terres & tenements as queux il ad title denter deins meſme le countie, ceo veſt vn ſeiſin de touts en luy & per tiel entry il ad poſſeſſion & ſeiſin en fait, ſicome il auoit enter en chescun parcel, &c.

¶ For if a man will enfeoffe another without deed of certaine lands or tenements which he hath in many townes in one Countie, and he will deliuer ſeiſin to the feoffee of parcell of the tenements within one Towne in the name of all the lands or tenements which he hath in the ſame towne, and in other townes, &c. all the ſaid tenements, &c. paſſe by force of the ſaid liuery of ſeiſin to him to whō ſuch feoffment in ſuch manner is made, and yet hee to whom ſuch liuery of ſeiſin was made hath no right in all the lands or tenements in all the townes but by reaſon of the liuery of ſeiſin made of parcell of the lands or tenements in one Towne: *A multo fortiori*, it ſeemeth good reaſon that when a man hath title to enter into the Lands or Tenements in diuers Townes in one ſame Countie, before entry by him made, that by the entry made by him into parcell of the lands in one towne, in the name of all the lands and tenements towhich he hath title to enter within the ſame Countie, this ſhall veſt a ſeiſin of all in him, and by ſuch entrie hee hath poſſeſſion and ſeiſin in deed, as if hee had entred into euery parcell.

¶ This is euident, but here is a diuerſitie betweene a feoffment and an entry, for a man may make a feoffment of lands in another Countie, and make liuery of ſeiſin within the view, albeit he might peaceably enter and make actuall liuery, and ſo may he ſhew the Recognitors in an Aſſiſe, the tenures of lands in another Countie, but a man cannot make an entry into lands within the view where he may enter without any feare (for it is (*) one thing to inueſt and another to deueſt) as hereafter ſhall be ſaid in the Section next following. 38.E.3.12. 38.Aſſ.23.

(*) *Vide Sect. next following.*

¶ *A multo fortiori.* Dr à minore ad maius, is an argument frequent in our Author, and in our Bookes, the force of argument in this place ſtanding thus: if it be ſo in a feoffment paſſing a new right, much more it is for the reſtitution of an ancient right as the worthier and more reſpected in Law, which holdeth affirmatiuely as our Author here teacheth vs. *Vide Sect.438.*

The three (&c.) in this Section need no explication.

Section 419.

Vide the Sect. preceding.

THere is to bee obserued, that euery doubt or feare is not sufficient, for it must concerne the safetie of the person of a man, and not his houses or goods, for if hee feare the burning of his houses, or the taking away or spoyling of his goods this is not sufficient, because hee may recouer the same or dammages to the value without any corporall hurt.

7.E.4.21.39.H.6.5.

Again if the feare do concern the person, yet it must not be a vaine feare, but such as may befall a constant man, as if the aduerse partie lye in wait in the way with weapons, or by words menace, to beate, mayhem or kill him, that would enter, and so in pleading must hee shew some iust cause of feare, for feare of it selfe is internall and secret. But in a speciall verdict, if the Iurors doe find, that the Disseisee did not enter for feare of corporall hurt, this is sufficient and shall bee intended that they had euidence to proue the same. Talis enim debet esse metus qui cadere potest in virum constantem, & qui in se continet mortis periculum, & corporis cruciatum. Et nemo tenetur se infortunijs & periculis exponere.

39.E.3.28. 11.R.2.tit.aures 2. 12.H.4.19.20.

Fleta lib.2.fol.16.b. Britton fol.19.66. Fleta lib.3. cap.7. & lib.2 cap.54.49.E 3 14.14.H.4.13. 39.Ass.11. 11.H.6.51.38.H.6.27. 39.H.6.36.5.20.H.6.28. 4.E.4.17.12.E.4.7.28.H.6. 8.41.E.3.9.11.H 4.6: 8.Ass.25. Vide Sect.434. W.2 cap.49. 13.H.4.dures 20.

¶ LE second chose est a entender, q̃ si hõe ad title denter en aſcuns terres ou tenements, sil ne oſast enter en mꝭ les terres ou teneme̅ts, ne en aſcun parcel de c̃, p̃ doubt d̃ battery, ou per doubt de mayhem ou pur doubt de moꝛt, sil aiast a approch auꝛy pꝛes les tenements, come il oſast pur tiel doubt, et claime per parol les tenements estre les soens, maintenant per tiel claime il ad vn possession. et seisin e̅ les teneme̅ts, auꝛybñ come sil vst enter en fait, coment que il nauoit vnque possession ou seisin d̃ mesme les terres ou teñts deuant le dit claime.

THe second thing to be vnderstood is that if a man hath title to enter into any lands or tenements, if he dares not enter into the same lands or tenements, nor into any parcell thereof for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as neere to the tenements, as hee dare for such doubt and by word claime the Lands to bee his, presently by such claime hee hath a possession and seisin in the lands, aswell as if hee had entred in deed, although hee neuer had possession or seisin of the same lands or tenements before the said claime.

And it seemeth that feare of imprisonment is also sufficient, for such a feare sufficeth to auoid a Bond or a Deed, for the Law hath a speciall regard to the safetie and libertie of a man. And imprisonment is a corporall dammage, a restraint of libertie, and a kind of captiuitie. But see in the second part of the Institutes, W.2 cap.49 a notable diuersitie betweene a claime or an entrie into land, and the auoydance of an Act or Deed for feare of battery.

¶ *Per tiel claime il ad vn possession & seisin, &c.* Here is to bee obserued, that there bee two manner of Entries, viz. an Entrie in Deed, and an Entry in Law. An entry in deed is sufficiently knowne, an entrie in Law is when such a claime is made as is here expressed, which entry in Law is as strong and as effectuall in Law as an entry in deed, and that aswell where the Lands are in the hands of one by title as by wrong. And therefore vpon such an entry in Law an Assise doth lie aswell as vpon an entry in deed, and such an entry in Law shall auoid a warrantie, &c.

Vide Sect.378.

11.H.6.51.

Vide Sect.442. Pl.Com.93. in Ass. defress-force. The Parson of Honylanes Cast.

But here is a diuersitie to be obserued betweene an entry in Law, and an entry in Deed, for that a continuall clayme of the Disseisee being an entry in Law shall vest the possession and seisin in him for his aduantage, but not for his disaduantage. And therefore if the Disseisee bring an assise, and hanging the assise, he make continuall claime, this shall not abate the assise, but he shall recouer dammages from the beginning, but otherwise it is of an entry in deed. See more of this matter after in this Chapter, Sect.422.

Section

Section 420.

CEt que la ley eſt tiel, il eſt bien proue per vn plee dun aſſiſe en le Liuer daſſ, An.38.E.3.P.32. le tenor de quel enſuiſt en tiel forme. En le County de Dorſet deuant ls Juſtices troue fuit per verdict daſſiſe, que le plaintife que auoit droit per diſcent de heritage dauer les tenements mis en plaint, al temps del morant ſon anceſter, fuit demurrãt en le ville ou les tenements fuetont, & per parolr claime les tenements enter ſes vicines, mes pur doubt de mort il nosa approcher les tenements, mes port laſſiſe, & ſur ceſt matter troue, agard fuit que il recouera, &c.

AND that the Law is ſo, it is well prooued by a plea of an Aſſiſe in the Booke of Aſſiſes, *An.38.E.3.P.32.* the tenor whereof followeth in this manner. In the Countie of Dorſet before the Iuſtices, it was found by verdict of Aſſiſe, that the Plaintife which had right by diſcent of Inheritance to haue the tenements put in pleint, at the deceaſe of his Anceſtor was abiding in the Towne where the tenements were, and by paroll claimed the tenements amongſt his Neighbours, but for feare of death hee durſt not approach the tenements but bringeth his Aſſiſe, and vpon this matter found, it was awarded that he ſhould recouer, &c.

HEre it appeareth that our Booke Cases are the beſt proofes what the Law is, Argumentum ab authoritate eſt fortiſſimum in Lege. And for proofe of the Law in this particular caſe, Littleton here citeth a caſe in 38.E.3. but it is miſprinted, for the originall according to the truth is. In the Booke of Aſſiſes 28 E.3.p.23 and not placito 32. for there be not ſo many pleas in that yeare. And after the example of Littleton, Booke Cases are principally to be cited for deciding of caſes in queſtion, and not any priuate opinion, Teſte meipſo. More ſhall be ſaid of the matter implyed in this Section in the next following. 38. Aſſ.p.23.

Sect. 421.

CLa tierce choſe eſt a entender, deins quel temps & per quel temps le claime que eſt dit cõtinuall claime, ſeruera & aidera celuy que fiſt le claime & ſes heires. Et quant a ceo eſt aſcauoir, que celuy que ad title dẽter, quant il voiet faire ſon claime, ſi il oſaſt approacher la

THe 3. thing is to know within what time & by what time the claim which is ſaid continuall claime ſhall ſerue and aid him that maketh the claime, and his heires. And as to this, it is to be vnderſtood, that hee which hath title to enter, when he will make his claime, if hee dare approach the Land then

CCouient a luy daler & approcher auxi pres, &c. By this it ſhould ſeeme that by the authoritie of our Author, if the Diſſeiſee commeth as neere to the Land as he dare, &c. and maketh his claime, this ſhould be ſufficient, albeit hee be not within the view.

And the great authoritie of the Booke (*) in 9.H.4 (being by the whole Court) is not againſt this, for that caſe is put where there is no ſuch feare, as here our Author mentioneth in him that makes the continuall claime, (*) 9.H.4.5.

and then hee that makes the continuall claime ought to be within the view of the land, and therefore the authority of this booke, as it is commonly conceiued, is not against the opinion of our Author in the point aforesaid. But then it is further obiected, that the said booke is against another opinion of our Author in this Section, viz. that where there is no feare, &c. hee that maketh a continuall clayme * ought to goe to the land or to parcell thereof to make his claime, and therefore in that case he cannot make a claime within the view of the land.

(*) 11.H.6.51. agreeth with our Author in this point.

terre, donqz il couient aler a la terre ou a parcel de ceo, & faire son claime, et sil nosast approcher la pur doubt ou pauor d baterie, ou mayhē, ou mort, donques couient a luy aler & approcher auxpres come il osast vers la terre, ou parcel de ceo, a faire son claim.

he ought to goe to the land, or to parcell of it, and make his claime, and if hee dare not approch the land for doubt or feare of beating or mayming, or death, then ought hee to goe and approch as neere as hee dare towards the land or parcell of it to make his claime.

To this it is answered, that where a continuall claime shall deuest any estate in any other person in any lands or tenements, there, as it hath beene said, he that maketh the claime ought to enter into the land or some part thereof according to the opinion of our Author: but where the claime is not to deuest any estate, but to bring him that maketh it into actuall possession, there a claime within the view sufficeth; as vpon a discent the heire hauing the freehold in law may claime land within the view to bring himselfe into actuall possession, and in that sence is the opinion of Hull and the Court to be intended. Et sic in similibus. But yet the entrie into some parcell in the name of the residue is the surest way.

Vid.Sect.177.

Sect. 422.

¶ Eins lau, & le iour. Il is to be obserued that the Law in many cases hath limitted a yeare and a day to be a legall and conuenient time for many purposes, As at the Common Law vpon a fine or finall iudgement giuen in a writ of right the partie grieued had a yeare and a day to make his clayme. So the wife or heire hath a yeare and a day to bring an appeale of death. If a Villeine remained in ancient Demesne a yeare and a day he is priuiledged. If a man bee wounded or poysoned, &c. and dieth thereof within the yeare and the day, it is felony. By the ancient Law if the Feoffee of a Disseisor had continued a yeare and a day, the entrie of the Disseisee for his negligence had beene taken away. After iudgement giuen in a reall action, the Plaintife within the yeare and the day may haue a Habere facias seisinam, and in an action of debt, &c. a Capias, Fieri facias, or a Leuari facias A protection shall bee allowed but for a yeare and a day and no longer, and in many other cases.

Vid.Sect.385.426. 9.H.4.5. 14.H.4.36. 7.E.3.37. Pl.Com.356. 357.367. Mirror, cap.2. §.18. Britton, fol.45.b. & 126.

¶ Et si son aduersarie q occupia le terre, mourust seisie en fee, ou en fee taile deins lan et le iour apres tiel claim, per que les tenemēts discendont a son fits come heire a luy, uncore poit celuy que fist le claime entrer sur le possession le heire, &c.

And if his aduersary who occupieth the land dieth seised in fee, or in fee taile within the yeare and a day after such claime, whereby the lands discend to his sonne as heire to him, yet may hee which make the claime enter vpon the possession of the heire, &c.

Vid.Sect.385.

But this time of a yeare and a day in case of continuall claime is since our Author wrote altered by the said Statute of 32.H.8.ca.33. as before it appeareth.

Sect.

Sect. 423.

¶ MEs en ceſt cas apres lan & le iour que tiel claime fuit fait, ſi le pere donques moruſt ſeiſi ademain prochaine aps lan & le iour, ou vn auter iour apres, &c. donques ne poit celuy que fiſt le claime entrer: & pur ceo ſi celuy que fiſt le claime voit eſtre ſure a touts temps que ſon entre ne ſerra toll per tiel diſcent &c. il couient a luy que deins lan & le iour apres le primer claime fait, de faire vn auter claime en le forme auantdit, & deins lan & le iour apres le ſecond claime fait, de faire le tierce claime en meſm̃ le maner, & deins lan et le iour de le tierce claime, de faire vn auter claime, & iſſint ouſter, ceſtaſcauoir, de faire vn claime deins cheſcun an et iour prochein aps cheſcun claime fait durant la vie ſon aduerſarie, et donques, a quecunqz temps q̃ ſon aduerſarie moruſt ſeiſi, ſon entrie ne ſerra tolle per nul tiel diſcent. Et tiel claim̃ en tiel maner fait, eſt pluis communement priſe et noſme continual claime de luy que fiſt le claime.

BVt in this caſe after the yeare and the day that ſuch clayme was made, if the father then died ſeiſed the morrow next after the yeare and the day, or any other day after, &c. then cannot hee which made the claime enter: And therefore if hee which made the claime will be ſure at all times that his entrie ſhall not be taken away by ſuch diſcent, &c. it behoueth him, that within the yeare and the day after the firſt claime made, to make another claime in forme aforeſaid, and within the yeare and the day after the ſecond claime made, to make the third claime in the ſame manner, and within the yeare and the day after the third claime to make another claime, and ſo ouer, that is to ſay, to make a claime within euery yeare and day next after euery claime made during the life of his aduerſarie, and then at what time ſoeuer his aduerſarie dieth ſeiſed, his entrie ſhall not be taken away by any diſcent. And ſuch claime in ſuch maner made is moſt commonly taken and named continuall claime of him which maketh the claime, &c.

¶ It is to be obſerued, that the yeare and the day ſhall be ſo accounted, as the day whereon the Claime was made ſhall be accounted one: as for example, If the Claime were made 2. Die Martii, that day ſhall be accounted for one, for Littleton ſaith in the Section next before (after the clayme made) and then the yeare muſt end the firſt day of March, and the day after is the ſecond day of March. *Vid. Sect. 385.*

See for the Computation of the yeare, De anno biſextili, and of the day naturall and artificiall, and other parts of the yeare, (a) Bracton, (b) Britton, and (c) Fleta excellent matter.

(a) *Bract. fo. 264. 344. 359.*
(b) *Britton, fo. 209.*
(c) *Fleta, lib. 6. ca. 11.*
Statute de anno Biſextili.
21. H. 3. Dier 17. Eliz. 345.

Sect. 424.

¶ MEs vncore en le cas auantdit, lou ſon aduerſarie

BVt yet in the caſe aforeſaid, where his Aduerſarie dieth

ſarie mozuſt deins lan & la iour
pzocheine apzes le claime, ceo eſt
en ley vn continuall claime en-
tant que laduerſarie deins lan &
le iour pzocheine apzes meſme
la claime mozuſt. Car il ne be-
ſoigne a celuy que fiſt ſon claime
de faire aſcun auter claime, mes
a quel temps que il voet deins
meſme lan et iour, &c.

within the yeare and the day next after the claime, this is in Law a continuall claime, inſomuch as his aduerſarie within the yere and the day next after the ſame claime, dieth. For hee which made his claime, needeth not to make any other claime, but at what time hee will within the ſame yeare and day, &c.

Vi. Sect. 414.

This is euident.

Section 425.

¶ Item ſi laduerſary ſoit diſ-
ſeiſie deins lan et le iour a-
pzes tiel claime, & le diſſei-
ſoz ent mozuſt ſeiſie deins lan
et le iour, &c. tiel mozant ſeiſie
ne grieuera my celuy que fiſt le
claime mes que il poit enter, &c.
Car quecunque ſoit que mozuſt
ſeiſie deins lan et le iour pchein
apzes tiel claim fait, ceo ne grie-
uera my celuy que fiſt le claime,
mes que il poit enter, &c. coment
que fueront pluſozs mozant ſei-
ſie, et pluſozs diſcents deins an
lan et le iour, &c.

ALſo if the Aduerſarie be diſ-
ſeiſed within the yeare and the day after ſuch claim, and the Diſſeiſor thereof dieth ſeiſed within the yeare and the day, &c. ſuch dying ſeiſed ſhall not grieue him which made the claime, but that he may enter, &c. for whoſoeuer he bee that dieth ſeiſed within the yeare and the day after ſuch claime made, this ſhall not hurt him that made the claime, but that he may enter, &c. albeit there were many dyings ſeiſed, and many diſcents within the ſame yeare and day, &c.

¶ Here it appeareth, That the continuall claime doth not onely extend to the firſt Diſſeiſor in whoſe poſſeſſion it was made, but to any other Diſſeiſor that dieth ſeiſed within the yeare and day after the continuall claime made. And whereas our Author ſpeaketh of a ſecond diſſeiſor, &c. herein is likewiſe implied not onely Abators and Intruders, but the Feoffees or Donees of the Diſſeiſors, Abators, or Intruders, and any other Feoffee or Donee immediate or mediate dying ſeiſed within the yeare and day, of ſuch continuall claime made.

Section 426.

¶ Item ſi home ſoit diſſeiſie,
et le Diſſeiſoz mozuſt ſeiſie
deins lan et l'iour pzochein
apzes le diſſeiſin fait, per que les
Tenements diſcendont a ſon
heire

ALſo if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed within the yeare and day next after the Diſſeiſin made, whereby the Tenements diſcend to his heire, in this

heire, en ceſt caſe lentrie le Diſſeiſee eſt toll, car lan et le iour que aidʒoit le Diſſeiſee en tiel caſe, ne ſerra pʒis de temps de tiel dentre a luy accrue, mes tantſolement de temps del claim per luy fait en le manner auauntdit, et pur cel cauſe il ſerroit bone p̄ tiel diſſeiſee, pur faire ſon claime en aucy bʒeue temps que il puiſſoit, apʒes le diſſeiſin, &c.

caſe the entrie of the diſſeiſee is taken away, for the yeare and day which ſhould ayd the Diſſeiſee in ſuch caſe, ſhall not bee taken from the time of title of entrie accrued vnto him, but onely from the time of the claim made by him in manner aforeſaid. And for this cauſe it ſhall be good for ſuch diſſeiſee to make his claime in as ſhort time as he can after the Diſſeiſin, &c.

¶ This in caſe of a Diſſeiſor is now holpen by the Statute made ſince Littleton wrote as hath been ſaid; for if the Diſſeiſor dis ſeiſed within fiue yeares after the Diſſeiſin, though there bee no continuall claime made, it ſhall not take away the entry of the Diſſeiſe, but after the fiue yeares, there muſt bee ſuch continuall claime as was at the common law: But that Statute extendeth not to any Feoffee or Donee of the Diſſeiſor immediate or mediate, but they remaine ſtill at the Common Law, as hath been ſaid. 32.H.8.ca.33. Vi.Sect.305.422.

Sect. 427.

¶ Item ſi tiel Diſſeiſor occupia la terre per xl. ans, ou per pluſors ans ſans aſcũ claim fait per le diſſeiſee, &c. Et le Diſſeiſee per petit ſpace deuaunt le mort del Diſſeiſor fait vn claim en le forme auantdit, ſi iſſint fortunaſt que deins lan et le iour apres tiel claime le Diſſeiſor moruſt &c. lentrie le Diſſeiſee eſt congeable, &c. et pur ceo il ſerroit bone pur tiel home que ne fiſt claime que ad bone title dentrie, quant il oyet que ſon aduerſarie giſt languiſhment, de faire ſon claime, &c.

ALſo if ſuch Diſſeiſor occupieth the lands fortie yeares, or more yeares, without any claime made by the Diſſeiſee, &c. and the Diſſeiſee a little before the death of the Diſſeiſor makes a claime in the forme aforeſaid, if ſo it fortuneth, that within the yeare and the day after ſuch claime, the Diſſeiſor die, &c. the entrie of the Diſſeiſee is congeable, &c. And therefore it ſhall bee good for ſuch a man which hath not made claime, and which hath good title of entrie, when he heareth that his aduerſary lieth languiſhing, to make his claime, &c.

¶ This is euident enough, and in reſpect of that which hath been ſayd, needeth not to be explained.

Sect. 428.

¶ Item ſicome eſt dit en les caſes miſes, lou home

ALſo as it is ſaid in the caſes put where a man hath title

¶ Here title is taken in his large ſence to include a right.

¶ *Aſcun auter title, &c.*

&c. Here is implied Abators or Intruders, and not onely their Disseisors, but the Feoffees or Donees of disseisors, abators, or Intruders, or any other so long as the entrie is congeable.

ad title dentre pur cause dun disseisin, &c. Mesme la Ley est lou home ad droit dentre per cause de aſcun auter title, &c.

of entrie by cause of a Disseisin, &c. the same Law is where a man hath right to enter by cause of another title, &c.

Sect. 429.

¶ Item ô les dits Presidẽts poies scauer (mon fits) deux choses. Un est, lou home ad title dentre sur vn Tenant en le taile, sil fist vn tiel claim a la tre, donques est lestate Taile defeat, car cel claime est come entre fait per luy, et est de mesme leffect en Ley, sicome il fuisoit sur mesmꝭ tenements, et vst entr en mesmꝭ les Tenements come deuant est dit. Et donques quaunt le Tenant en le taile immediate puis tiel claime continua son occupation en les tenements, ceo est vn disseisin fait de mesmes les tenements, a celuy que fist tiel claime, & sic per consequens, le tenant adonques ad fee simple.

ALso of the sayd foresaying thou mayst know (my sonne) two things. One is where a man hath title to enter vpon a Tenant in Taile, if he maketh such a claime to the land, then is the estate tayle defeated, for this claime is as an entrie made by him, and is of the same effect in Law, as if he had bin vpon the same tenements, and had entred into the same, as before is sayd. And then when the tenant in Tayle immediately after such claime continue his occupation in the lands, this is a Disseisin made of the same Tenements to him which made such claime, and so by consequent the Tenant then hath a Fee simple.

¶ *Presidents.* This should be Precedents, and so is the originall, and this agreeth with the right sence of Littleton.

And here it appeareth, That a continuall claime, which is an entrie in Law, is as strong as an entrie in deed.

¶ *Title de entrie.* Here Title de entrie is taken in the large sence for right of entrie.

Vi.Sect.630. and 659.&c.

Section 430.

¶ Le second chose est, que auxy souent que il que ad droit dentre fait tiel claime & ceo nient contrestant son aduersary continua son occupation, auxy souent laduersary fait tort & disseisin a celuy que fist le claim. Et pur

THe second thing is, That as often as hee which hath right of entrie maketh such claime, and this notwithstanding his aduersary continue his occupation, so often the Aduersarie doth wrong and Disseisin to him which made the claime.

put cel cause auxy souent poit celuy que fist ñ le claime pur chescun tiel tort & disseisin fait a luy, auer vn briefe de frñs. Quare clausum fregit, &c. et recouera ses damages, &c.

And for this cause so often may he which makes the same claime for euery such wrong & disseisin done vnto him, haue a Writ of trespasse. *Quare clausum fregit, &c.* and recouer his dammages, &c.

¶ Hereby also it appeareth, that an entry in Law is equiualent to an entry in deed.

¶ *Auera breue de trespasse*, quare clausum fregit *& recouera ses damages*. The Disseisee shall haue an Action of trespasse against the Disseisor, and recouer his dammages for the first entrie without any regresse, but after regresse he may haue an Action of trespasse with a Continuando and recouer aswell for al the meane occupation as for the first entry. And here note that Littleton doth here include cats within dammages, &c.

Sect. 431.

COment il poit auer vn breife sur le statute le Roy R. le second, fait lan de son raigne 5. suppsant p son breife, que son aduersarie auoit ent ms terres ou tenements celuy que fist le claime, ou son entry ne fuit pas done per la ley, &c. & per tiel action il recouera ses dammages, &c. Et si le case fuit tiel, que laduersarie occupiast les tenements oue force et armes, ou oue multitude de gents a tẽps de tiel claime, &c. immediate apres mesme le claime, poit celuy que fist le claime, pur chescun tiel fait auer vn briefe de forcible entrie, et recouera ses treble dammages, &c.

OR hee may haue a Writ vpon the statute of *R.* 2. made in the fifth yeare of his Raigne, supposing by his Writ that his Aduersarie had entred into the lands or tenements of him that made the Clayme, where his entry was was not giuen by the Law, &c. and by this action he shall recouer his dammages, &c. & if the case were such that the aduersarie occupied the tenements with force and armes or with a multitude of people at the time of such claime, &c. immediately after the same claime may hee which made the claim for euery such act haue a Writ of forcible entrie & shall recouer his treble dammages, &c.

¶ This is the statute of 5. R. 2. cap. 7.

37. H. 6. 35. 34. H. 6. 30. 13. H. 7. 15. 10. H. 6 14. 2. E. 4. 18. 21. E. 4. 5. 74. 13. E. 2. 3. 27. Ass. 64. 38. Ass. 9. 44. E. 3. 20. 10. H. 7. 27. Keilw. 71. b. 5. R. 2. c. 7.

¶ *Per tiel action il recouera ses dammages.*

This is to bee vnderstood that hee shall recouer dammages for the first tortious entry, but not for the meane profits in this action though he made a regresse. And here note that also he shall recouer his costs of suite expensæ litis, which Littleton doth include within these words (dammages) &c.

2. E. 4. 24. b. 9. E. 4. 4. b. 16. H. 7. 6. a.

¶ *Dammages*, damna in the Common Law hath a speciall signification for the recompence that is giuen by the Iury to the Plaintife or Defendant for the wrong the Defendant hath done vnto him.

¶ *Multitude.* One or more may commit a force, three or more may commit an vnlawfull assembly, a riot or a rout. A multitude here spoken of (as some haue said) must be ten or more. Multitudinem decem faciunt. And so (say they) it is said, de grege hominum. But I could neuer read it restrained by the Common Law to any certaine number, but left to the discretion of the Judges.

¶ *Vn briefe de forcible entrie & recouera ses treble dammages.* This

8.H.6.cap.9.3.E.4.19.24. F.N.B.248.11.E.4.11.b. 6.H.7.12.b.22.H.6.37. 19.H.6.Register.97. 22.H.6.57.F.N.B 249.a

wrt it is grounded vpon the statute of 8.H.6. and lyeth either where one entreth with force, or where he entreth peaceably and detayneth it with force or where he entreth by force, and detayneth it by force. And in this action without any regresse the Plaintife shall recouer treble dammages, as well for the meane occupation as for the first entry by force of the Statute. And albeit he shall recouer treble dammages, yet shall he recouer costs which shall be troubled also.

One may commit a forcible entry as hath beene said, in respect of the armour or weapons which he hath that are not vsually borne, or if he doe vse violence, and threats to the terrour of another. And if three or foure goe to make a forcible entry, albeit one alone vse the violence, all are guilty of force. If the Master commeth with a greater number of seruants then vsually attend on him it is a forcible entry,

10.H.7.12.

33.H.6.20.

It is to be vnderstood that there is a force implyed in Law, as euery Trespasse and Reconu and Dissetsin implyeth a force, and is vi & armis, and there is an actuall force, as with weapons, number of persons, &c. and when an entry is made with such actuall force, an action doth lie vpon the said statute. Set before more of force and armes. Sect.240.

Section 432.

¶ Item il est a veier, si le seruant dun home que ad title denter, poit per le commandement son Master faire continuall claime pur son Master ou non.

ALso it is to bee seene, if the Seruant of a man who hath title to enter, may by the commandement of his Master make Continuall Claime for his Master or not.

This needeth no explication.

Section 433.

¶ Et il semble que en aſcuns caſes il poit ceo faire, car sil per son commandement vient a aſcun parcel de la terre a la fait claime, &c. en le noſme son Maſter, ceſt claime eſt aſſetz bone pur son Master, pur ceo que il fait tout ceo que son Master couient faire ou deuoit faire en tiel cas, &c. Auxy si le Master dit a son seruant, que il ne oſaſt bener a la terre, ne aſcun parcel de la terre, pur faire son claime, &c. et que il ne oſaſt approcher pluis prochein a la terre forſque a tiel lieu appell Dale, et commanda son seruant daler a meſme le lieu de Dale, et la faire vn claime pur luy, &c. si le seruant iſſint fait, &c. ceo ſemble auxy bone claime pur son Master, ſicome son

AND it ſeemeth that in ſome caſes he may doe this. For if he by his commandement commeth to any parcell of the Land, and there maketh claime, &c. in the name of his Maſter, this claime is good enough for his Maſter, for that he doth all that which his Maſter ſhould or ought to doe in ſuch caſe, &c. Alſo if the Maſter ſaith to his ſeruant that hee dares not come to the land, nor to any parcell of it to make his claime, &c. and that hee dare approch no neerer to the land then to ſuch a place called Dale, and command his ſeruant to goe to the ſame place of Dale, and there make a claime for him, &c. if the ſeruant doth this, &c. this alſo ſeemeth a good claime for his Maſter, as if his Maſter were

ſon Maſter la fuit en proper perſon, pur ceo que le ſeruant fiſt tout ceo que ſon Maſter oſaſt et deuoit faire per la ley en tiel caſe, &c.

there in his proper perſon, for that the ſeruant did all that which his Maſter durſt, and ought to doe by the law in ſuch a caſe, &c.

¶ HEre it appeareth that where the ſeruant doth all that which he is commanded, and which his Maſter ought to doe, there it is as ſufficient as if his Maſter did it himſelfe for the rule is, Qui per aliuin facit per ſeipſum facere videtur.

¶ *Per commandement.* If an infant or any man of full age haue any right of Entrie into any lands, any ſtranger in the name and to the vſe of the Infant or man of full age may enter into the lands, and this regularly ſhall veſt the lands in them without any commandement precedent or agreement ſubſequent. (*) But if a Diſſeiſor leaſe a fine, with Proclamation according to the ſtatute an eſtranger without a Commandement precedent or an agreement ſubſequent within the fiue yeares cannot enter in the name of the Diſſeiſee to auoide the Fine. And that reſolution was grounded vpon the conſtruction of the Statute of 4.H.7.cap.24. But an aſſent ſubſequent within the fiue yeares ſhould bee ſufficient, Omnis enim ratihabitio retrotrahitur, & mandato æquiparatur, as hath beene ſaid.

7.E.3.69.a.b.
45.E.3. Releaſe 28.
45.E.3.tit. Breife 589.
20.E.3.62 per Thorp.
11.Aſſ p.11. 39.Aſſ p.18.
10.H.7.12.a.
31.H.8.tit.entr.Cong.
& 2.E.Fauxiſier accompt 29.
(*) Lib.9.fo.106.a. the Lo. Awdleys caſe.

¶ *Auxi ſi le maſter dit a ſon ſeruant que il ne oſaſt, &c.* Here it appeareth that where the ſeruant purſueth the commandement of his Maſter, and doth all that which his Maſter durſt and ought to doe by the Law, this is ſufficient. And although the Maſter feareth more than the ſeruant, or admit that the ſeruant hath no feare at all, yet if he goeth as farre as his Maſter durſt and as he commanded, it is ſufficient. And this is implied in this Section.

Sect. 434.

¶ AVry ſi home ſoit cy languiſhant, ou cy decrepyte que il ne poit per nul maner bener a le terre, ne a aſcun parcel d̄ ycel, ou ſi vn recluſe ſoit, q̄ ne poit per cauſe de ſon ord̄er aler hors de ſa meaſon. Si tiel maner de perſon commaunda ſon ſeruant daler et faire claime pur luy, & tiel ſeruant ne oſaſt aler a le fre, ne a aſcun parcel de ceo pur doubt de batery, mayhem, ou mort, &c. et pur cel cauſe tiel ſeruāt viēt auxy pres a la terre come il oſaſt pur tiel

ALſo if a man be ſo languiſhing, or ſo decrepite that he cannot by any meanes come to the land nor to any parcell of it, or if there bee a recluſe which may not by reaſon of his order goe out of his houſe, if ſuch manner of perſon commaunde his ſeruant to goe and make claime for him, and ſuch ſeruant dare not goe to the land nor to any parcell of it for doubt of beating, mayhem, or death, &c. and for this cauſe the ſeruant commeth as neere to the land as he dareth for ſuch doubt

¶ REgularly it is true that where a man doth leſſe then the Commandement or Authority committed vnto him there (the Commandement or Authority being not purſued) the act is voide. And where a man doth that which hee is authoriſed to doe and more, there it is good for that which is warranted, and voide for the reſt, yet both theſe rules haue diuers exceptions and limitation.

For the firſt Littleton here putteth a caſe where the ſeruant doth leſſe then he is commanded, and yet it ſufficeth for that Impotentia excuſat legem, for ſeeing the maſter cannot, and the ſeruant dare not enter into the land, it ſufficeth that he come as neere to the land as he dare.

If a man makes a Letter of Attorney to deliuer ſeiſin to I.S. vpon Condition, and the Attorney deliuereth it abſolute, this is voide: and ſo ſome hold if the warrant be abſolute, and he deliuereth ſeiſin vpon Condition, the

11.H.4.3.
12.Aſſ.24. 28.Aſſ.39.

liuery is voide.

¶ *Pur battery, mayhem ou mort.* See the second part of the Institutes W.2.cap.49. a diuersity betweene the making of an Entrie or Claime, and the auoydance of an Act or Deede.

See before Sect.419.

¶ *Auterment le master serroit en tresgrand mischiefe.* Argumentum ab inconuenienti est validum in lege, quia lex non permittit aliquod inconueniens. And as hath beene often obserued before, Nihil quod est inconueniens est licitum.

¶ *Recluse.* Reclusus, Heremita, seu Anachorita, so called by the order of his religion he is so mured or shut vp, Quod solus semper sit, & in clausura sua sedet; and can neuer come out of his place. Seorsim enim & extra conuersationem ciuilem hoc professionis genus semper habitat: Note here, albeit the Recluse or Anachorite be shut vp himselfe, so as he by his order is not to come out in person, yet to auoide a Discent, he must command one to make claime, and such a Recluse shall alwayes appeare by Attorney in such cases where others must appeare in proper person, Impotentia enim excusat legem.

46.E.3.Petition 18.
33.H.6.8.
43.E.3.8.b.30.a.

doubt, et fait l'claim, &c. pur son master il semble que tiel claim pur son Master est assets fort, & bon en ley. Car auterment son master serroit en tresgrand mischiefe, car il bien poit estre que tiel person q̄ est languishant, decrepite, ou recluse, ne poit trouer ascun seruant que osast aler a la terr̄, ne ascun parcel de cel pur faire le claime pur luy, &c.

and maketh the claim, &c. for his master, it seemeth that such claime for his master is strong enough and good in law. For otherwise his master should bee in a very great mischiefe, for it may well be that such person which is sicke, decrepit, or recluse cannot finde any seruant which dare go to the land or to any parcell of it to make the claime for him, &c.

Sect.435.

¶ MEs il le master ō tiel seruant soit de bone sane, et poit, et osast bien aler a les tenements, ou a parcel de ceo de faire son claime, &c. si tiel Master cōmanda son seruant daler a ascun parcel de la terre a faire claime pur luy, et quant l'seruant est an alant de faire le commandement de son Master, il oye per le voy tiels choses que il ne osast vener a ascun parcel de la terre pur fair̄ le claime pur son Master, et pur sel cause il vient auxy pres la fre come il osast pur doubt de mort, et la fait claime pur son Master, et en le nosme de son master, &c. il semble que le doubt en le ley en tiel case serroit, si tiel claime auailera son Master, ou nemy, pur

BVt if the Master of such seruant bee in good health, and can and dare well goe to the lands or to parcell of it to make his claime, &c. if such Master command his seruant to goe to any parcell of the land to make claime for him, and when the seruant is in going to doe the commandement of his Master, he heareth by the way such things as he dare not come to any parcell of the land to make the claime for his Master, and therefore hee commeth as neere to the land as he dare for doubt of death, and there maketh claime for his master, and in the name of his Master, &c. It seemeth that the doubt in law in such case shall be whether such claime shall auaile his Master

pur ceo que le ſeruant ne fiſt tout ceo que ſon Maſter al temps de ſon commandement oſaſt faire, ge. Quære.

or not, for that the ſeruant did not all that which his Maſter at the time of his commandement durſt haue done, &c. *Quære.*

¶ This continuall claime is voide, for that the ſeruant doth leſſe then that which is expreſſly commanded, and there is no impotencie or feare in the Maſter.

Sect. 436.

¶ Item aſcũs ont dit que lou home eſt en priſon, et eſt diſſeiſie, et le diſſeiſor morust ſeiſie durant le temps q̃ le diſſeiſee eſt en priſon, per que les tenements diſcẽdont al heire del diſſeiſour, ils ont dit, que ceo ne noiera my le diſſeiſee que eſt en priſon, mes que il bñ poit enter, nient obſtant tiel diſcent, pur ceo que il ne puiſſoit fait̃ continual claim̃, quant il fuit en priſon.

ALſo ſome haue ſaid that where a man is in priſon and is diſſeiſed, and the diſſeiſor dieth ſeiſed during the time that the diſſeiſee is in priſon, whereby the tenements diſcend to the heire of the diſſeiſor, they haue ſaid that this ſhall not hurt the diſſeiſee which is in priſon, but that he wel may enter, notwithſtanding ſuch a diſcẽt, becauſe hee could not make continuall claim when he was in priſon.

¶ *Quant home eſt en priſon & eſt diſſeiſi.* For if he bee diſſeiſed when hee is at large, and the diſcent is caſt during the time of his impriſonment, this diſcent ſhall binde him. 9.H.7.24.Pl.Com.360.

Excuſatur autem quis quod clamcum ſuum non apposuerit, ſi tempore litigij in priſona detentus fuerit ita quod venire non poſſit, nec mittere, quia nulli vertitur in dubium, & vbi eadem ratio & idem jus erit, ideo videtur quòd excuſari debet, quis ſi per vim maiorem, vel per fraudem, extra priſonam detentus fuerit, ita quod venire non poſſit nec mittere, dum tamen hoc per certa iudicia probari poterit. Bracton.lib.5.fol.436. Britton.fol.116.b. Fleta.lib.6.cap.52.53. & lib 6.ca.7. & 14.

¶ *Pur ceo que il ne poet faire continual claime quant il fuit en priſon.* Here it is to be obſerued by the authority of Littleton that he is not enforced in this caſe by Law to doe it by his ſeruant or any other by his warrant or commandement, for things done by deputie are ſeldome well done, but euery man will ſee his owne buſineſſe moſt effectually ſpeeded and performed, and that it may be once ſpoken for all, the reaſon that a man impriſoned ſhall not be bound, in this and the like caſes is, for that by the entendment of Law he is kept (as it is preſumed in Law) without intelligence of things abroade, and alſo that he hath not libertie to goe at large to make entrie or claime, or ſeeke counſell. And ſo note a diuerſity betweene a Recluſe who might haue intelligence, and a man in priſon. Pl.Com.360. in Stowells caſe.

Sect. 437.

¶ Mes lopinion de touts les Iuſtices H.11 H.7. fuit, que ſi le diſſeiſin ſoit auant lenpriſonment, coment que l'mort ſeiſie ſoit, il eſteant en le priſon, ſon entrie eſt tolle.

BVt the opinion of all the Iuſtices, P.11.H.7. was that if the diſſeiſin bee before the impriſonment, although the dying ſeiſed be, he being in the priſon, his entry is taken away.

¶ This is of a new addition, and miſtaken, for there is no ſuch opinion, P.11.H.7. but it is, 9.H.7.fo.24.b.

Mirror cap.3. Britton fo.21. Fleta lib.1. cap.28. & lib.2. ca.59. Bracton li.2.

¶ IL reuersera tiel vtlagarie. Nota, the originall is, Reuersera tiel vtlagar̃ per Briefe de Error, and so it would be amended: for Outlawries may be reuersed two manner of wayes, viz. by Plea, or by Writ of Error. By Plea, when the Defendant comm.eth in vpon the Capias vtlagatum, &c. hee may by plea reuerse the same for matters apparant, as in respect of a Supersedeas, Omission of Processe, Variance, or other matter apparant in the Record, and yet in these cases some hold, That in another Terme the Defendant is driuen to his Writ of Error.

¶ Et auxy si tiel que est en prison soit vtlage in Action de debt, ou trespasse ou en appeal de Robberie, &c. il reuersera tiel vtlagarie enuers luy prounce, &c.

And also if hee which is in prison be outlawed in an Action of Debt or Trespasse, or in an Appeale of Robberie, &c. he shall reuerse this outlawrie pronounced against him, &c.

2.E.4.1. 4.E.4.10. 21.E.4.73. 11.H.7.5. 21.H.6.50. 9.H.4.3. 21.H.6.Vtlary 36. 7.H.6.27. 21.E.4.88.22. E.4.37. 18.E.3.Vtlauge 47 21.E.4.37. 33.H.6.45.16. 44.E.3.Vtlarie 41. 4.H.4.19. 11.H.4.34. 3. El. Dyer 192. 2.Eliz.176 5.Eliz. ibid.223. 19.H.6.2. 8.H.6.37. 37.H.6.19.

But for any matters in fact, as death, imprisonment, seruice of the king, &c. he is driuen to his Writ of Error, vnlesse it be in case of Felonie, and there in fauorem vitæ he may plead it.

But albeit imprisonment be a good cause to reuerse an Outlawrie, yet it must be by processe of Law in inuitum, and not by consent or couin, for such imprisonment shall not auoyd the Outlawrie, because vpon the matter it is his owne act.

8.H.4.7. 21.H.7.13. 10.H.6.58. 20.H.6.20. 21.H.6.55. 22.H.6.18.16 39.H.6.1. 33.H.6.51.45 38.H.6.33. 21.E.4.94. 21.H.7.33 5.H.7.1. 12.H.6.8. 11.H.6.67.19.1.E.4.2.27.H.8.2.

38.Ass.pl.17. Vid.Sect.439.

Section 438.

5.E.3.50.b. 7 H 6.38.

¶ THIS is euident enough.

Fletalib.6.cap.67.& 24 Vid.W.2.cap.48 and the exposition thereof, 2 part Inst. 4.E.2.Discont 51.

¶ Per Briefe derror. For hee shall haue no writ of Diceit, because the summons was according to the Law of the land, by Summoners and Pleiors, and the land taken into the Kings hand by the Pernor.

¶ Auxy si vn recouerie soit p default vers tiel q̃ est en prison, il auoidera le iudgement p briefe de Error, pur ceo que il fuit en prison al temps de le default fait, &c. Et pur ceo q̃ tiels matters de Record ne noyer̃ celuy que est ẽ prison, mes que ils serront reuerses, &c. a multo fortiori, il semble que vn matter en fait, s̃, tiel discent ewe quant il fuit en prison ne luy noyera, &c. specialm̃t pur ceo que il ne puis̃soit aler hors de prison pur faire continuall claime, &c.

Also if a recouerie bee by default against such a one as is in prison, he shal auoid the iudgement by a Writ of Error, because he was in prison at the time of the default made, &c. And for that such matters of Record shal not hurt him which is in prison, but that they shall bee reuersed, &c. *a multo fortiori*, it seemeth that a matter in fact, s. such discent had when hee was in prison, shall not hurt him, &c. especially seeing he could not goe out of prison, to make continuall claime, &c.

Bracton Lib.5.Tract.3. Fletali.6 ca.7.14. 3.H.6.46 38.E.3.5. 31.H.6 Barr.66 12.H.4.13. 50.E.3.9. 3.H.6.48. 2 H.4.8. 5.H.7.3. F.N.B.17. Bracton lib.4.fol.367 369. Glan lib.1.cap 8.28.H.6.11. 4.H.5.Challenge.153. Br.Sauer.Def.45.

¶ Per default. Default is a French word, and defalta is legally taken for Non-apparance in Court. There bee diuers causes allowed by Law for sauing a mans default, as first by Imprisonment, whereof Littleton here speaketh. 2. Per inundationem aquarum. 3. Per tempestatem. 4. Per pontem fractum. 5. Per nauigium substractum per fraudem petentis, non enim debet quis se periculis & infortunijs gratis exponere, vel subiacere. 6. Per minorem ætatem. 7. Per defensionem summonitionis per Legem. 8. Per mortem Attornati si tenens in tempore non nouit. 9. Si petens essoniatus sit. 10. Si placitum mittatur sine die. 11. Per Breue de Warrantia Diei. But sicknesse (as one holds) is no cause of sauing a default, because it may be so artificially counterfeited, that it cannot be knowne.

¶ *Record.* Recordum is a memoriall or remembrance in Rolles of Parchment, of the proceedings and Acts of a Court of Iustice which hath power to hold plea according to the course of the Common Law, of reall or mixt Actions, or of Actions quare vi & armis, or of personall Actions, whereof the debt or dammage amounts to forty shillings, or above, which we call Courts of Record, and are created by Parliament, Letters Patents, or Prescription. *Glanvill lib. 8. cap. 8. Bracton lib. 3. fol. 156. Britton in proemio & cap. 27.*

It is aptly derived of Recordari, which is to keepe in memorie or record, as it is said, Quod dicere nihil aliud est quam recordari, and in the same sence the Poet vseth it, Si rite audita recordor. But legally Records are restrained to the Rolles of such onely as are Courts of Record, and not the Rolles of inferiour, nor of any other Courts which proceed not secundum legem & consuetudinem Angliæ. And the Rolles being the Records or memorialls of the Iudges of the Courts of Record, import in them such incontrollable credit and veritie, as they admit no auerment, plea, or proofe to the contrarie. And if such a Record be alledged, and it be pleaded, That there is no such Record, it shall be tried onely by it selfe: and the reason hereof is apparant, for otherwise (as our old Authors say, and that truly) there should neuer be any end of controuersies, which should be inconuenient. Of Courts of Record you may read in my Reports: but yet during the Terme wherein any iudiciall act is done, the Record remaineth in the breast of the Iudges of the Court, and in their remembrance, and therefore the Rolle is alterable during that Term, as the Iudges shal direct, but when that Term is past, then the Record is in the Rolle, and admitteth no alteration, auerment, or proofe to the contrarie. *Pl. Com. 79. b. Mich. 7. & 8. Eliz. Dier 242. 17. E. 3. 49 37. H. 6. 21. b. 11. H. 4. 20 b 21. H. 6. 34. Error. Br. 73. 7. H. 7. 4. 19. Ass. 7. Eds. 4. fol. 32. in Rawlins Case. Glanvill lib. 8. cap. 8. Bracton Lib. 3 fol. 156. Britton cap. 27. Lib. 6. fol. 11. Ieuelemans Case. & 30. 45. Lib. 7. fol. 30. Lib. 8. fol. 60. b. & 67. a. 7. H. 6. 28. 19. H. 6. 9.*

If a Grant by Letters Patents vnder the great Seale be pleaded and shewed forth, the aduerse partie cannot plead Nul tiel Record, for that it appeares to the Court that there is such a record: but in asmuch as it is in nature of a cõueiance, the partie may denie the operation therof, therefore he may plead Non concessit, and proue in euidence that the King had nothing in the thing granted, or the like, and so it was adiudged. But to returne to Littleton: What then? Shall a man that is in prison be priuiledged from Suits or Outlawries? Nothing lesse, for if the Tenant or Defendant bee in prison, hee shall vpon motion by order of the Court, bee brought to the Barre, and either answer according to Law, or else the same being recorded, the Law shall proceed against him, and he shall take no aduantage of his imprisonment. *18. Eliz. Dier 353. 3. Mar. Dier 129. Pl. Com. 232. Sir Anior Berkleys case. 16. H. 7. 11. b. 22. H. 8. Record. Br. 65. 39. H. 6. 4. 3. Eliz. Dier 187. Lib. 6. fol. 15. Edens Case. Mich. 31. et 32. Eliz. Rot. 369. In Banke le Roy, inter Eden & Franklyn et Browne. 7. H. 6. 38. 8. H. 6. 16.*

¶ A multo fortiori. Here is an argument, A minori ad maius, and the force of our Authors argument is this, If a man in prison shall not be bound by a recouerie by default for want of answer in Court of Record in a reall Action, which is matter of Record, (the heigth and strength whereof hath beene somewhat touched) à multo fortiori, a liuerie in the Countrie, which is matter of deed, shall not for want of claim bind him that is in prison. And as the argument à minori ad maius, doth euer hold (as our Author hath already told vs) affirmatiuely, so the argument à maiori ad minus doth euer hold negatiuely, as our Author here teacheth vs: and the reason hereof is this, Quod in minori valet, valebit in maiori, & quod in maiori non valet, nec valebit in minori. *Vide Section 418.*

¶ *Pur ceo que il ne poet aler hors de prison, &c.* By this it appeareth, That a man in prison by processe of Law ought to be kept in salua & arcta custodia, and by the Law ought not to goe out, though it be with a Keeper, and with the leaue and sufferance of the Gaoler: but yet imprisonment must be, custodia, & non pœna, for, Carcer ad homines custodiendos, non ad puniendos dari debet.

Section 439.

¶ En mesme le manner il semble, lou home est hors du Royalme, en seruice le Roy, pur besoigne del Royalme, si tiel hõe soit disseisie quant il est en ſuice le Roy, et le disseisor mõt seisie, le disseisee

IN the same manner it seemeth where a man is out of the Realme in the Kings seruice, for the busines of the Realme, if such a one be disseised when hee is in seruice of the King, and the disseisor dieth

¶ *Hors du Roialme.* (id est) extra Regnum, as much to say, as out of the power of the King of England, as of his Crowne of England: for if a man be vpon the Sea of England, he is within the Kingdome or Realm of England, and within the ligeance of the King of England, as of his Crowne of England. And yet altum mare is out of the iurisdiction of the common law, *6. R. 2. Pateſh. 46. Vide Sect. 198 440. 441.*

Law, and within the iurisdiction of the Lord Admirall, whose iurisdiction is verie antient, and long before the raign of Edward the third, as some haue haue supposed, as may appeare by the Lawes of Oleron, (so called for that they were made by King Richard the first when he was there) that there had beene then an Admirall time out of mind, and by many other antient records in the raignes of Henry the third, Edward the first, and Edward the second, is most manifest.

Rot. Pat. { 8.H.3. 9.H.3. 15.H.3.
Temp. E.1. Auowrie 192.
Rot. Vascon. 22.E.1.m.8.
Pat. 23.E.1. 1.pars Pat.
10 E.2. & 8 E.2. Coron. 399.
Stamf. Pl. Coron. 51.

seisee esteant en le seruice le Roy, que tiel discent ne grieueroit le Disseisee, mes pur ceo que il ne pussoit faire continual claime, il semble a eux, que quaunt il vient en Engleterre, il poit enter sur heir le Disseisor, &c. Car tiel home reuersera vn vtlagary prounc enuers luy durant le temps que il fuit en le seruice le Roy, &c. Ergo à multo fortiori, auera aid et indemnitie per la Ley en lauter case, &c.

seised, &c. the disseisee being in the K. seruice, that such discent shall not hurt the Disseisee, but for that hee could not make continuall claim, it seemes to the that whē he commeth into England hee may enter vpon the heire of the Disseisor, &c. for such a man shall reuerse an outlawry pronounced against him during the time that he was in the Kings seruice, &c. Therefore *à multo fortiori* he shal haue aid & indemnitie by the law in the other case, &c.

See hereafter in another case which Littleton put in his Chapter of Remitter, there he saith, Ouster le mere, beyond the sea. This great Officer in the Saxon Language is called, Aen mere al, (i.) ouer all the sea, Præfectus maris, siue classis, archithalassus: and in antient time the office of the Admiraltie was called, Custodia marinæ Angliæ, or Maritinæ Angliæ.

Vide Section 677.

And note Littleton saith not, Beyond the sea, or extra quatuor maria, for a man reuera may be infra quatuor maria, and yet out of the Realme of England. But Infra quatuor maria, or extra, is taken by construction to be within the Realme of England, or the Dominions of the same.

8.R.3. Cont. claime 13.
4.E.3.46.

But here a question may be demanded, what if a man be out of the Realme, and a Recouerie is had against him in a Præcipe by default, whether shall he auoyd it in a Writ of Error, as well as he should doe the Outlawrie, or if he had beene imprisoned at the time of such recouery by default? And it seemeth that he shall not auoid the recouerie, for by that meanes a man might be infinitely delayed of his Freehold and Inheritance, whereof the Law hath so great a regard. And few or none goe ouer, but it is either of their owne freewill, or by suit, for what cause soeuer, and he is not in that case without his ordinarie remedie, either by his Writ of higher nature, or by a Quod ei deforceat. But Outlawrie in a personall Action shall be auoyded in that case, quia de minimis non curat Lex, and otherwise he should be without remedie. See Section 437. and note the diuersitie betweene that case of the imprisonment, and this of being beyond sea. And Littleton putteth the case of imprisonment, and omitteth the being beyond sea here: neither haue I seene any Booke to warrant, That he that is beyond sea shall in this case auoyd the recouerie by default.

Brall. li. 5. fo. 436.

¶ *En seruice le Roy.* Bracton sheweth, That the exception of being beyond sea is, quia fuit in seruitio Domini Regis vltra mare, viz. apud talem locum, and that case is cleere: but you shal heare the opinion of Bracton in the next Section, where he is not in the seruice of the King.

Sect. 440.

Brall. li. 5. fo. 436. b. & 163. Brit. fo. 21. 216. 217. Flet. li. 6 ca. 52. 53. 13. H. 4. Triall 6. 9. H. 4. 3. 21. H. 6. Error 27. 33. H. 6. 1. 21. H. 6. 34. 26. H. 8. ca. 18. 5. & 6. E. 6. ca. 11.

¶ AND herewith the antient law of England is agreeable with Littleton, and the Law at this day. So as it is Vetus & constans opinio. Excusatur etiam quis qđ clamenm

¶ Item auters ont dit, que si ascun soit hors du Royalm coment que il ne soit en seruice le Roy, si tiel

ALso others haue said, that if a man bee out of the Realme, though hee bee not in the Kings

tiel home eſteant hors de le Royalme, eſt diſſeiſie en terres ou tenements deins le Royalme, & le diſſeiſour deny ſeiſie, &c. le diſſeiſee eſteant hors du Royalme, il ſemble a eux q̄ quant le diſſeiſee vient dins le Royalme, que il poit enter ſur iheire le diſſeiſor, & ceo ſemble a eux per deux cauſes. Un eſt, que celuy que eſt hors du Royalme ne poit auer conuſans dl diſſeiſin fait a luy per entendement de ley, vient pluis que choſe fait hors du Royalm̄ poit eſtre try deins l' Royalme per le ſerement de 12. & de compeller tiel home per la ley de faire continuall claime, le quel per lentendement de le ley ne puit auer aſcun notice, ou conuſance de tiel diſſeiſin, ceo ſerra inconuenient, & noſmemt quant tiel diſſeiſin eſt fait a luy quant il eſt hors du Royalme, & auxy le mozant ſeiſie fuit quāt il fuit hors du royalm: Car ē tiel caſe il ne poit per nul poſſibility ſolonque common preſumption faire continuall claime. Mes auter-

Seruice, if ſuch a man being out of the Realme be diſſeiſed of Lands or Tenements within the Realme, and the Diſſeiſor die ſeiſed, &c. the Diſſeiſee being out of the Realme, it ſeemeth vnto them, that when the Diſſeiſee commeth into the Realme, that he may well enter vpon the heire of the Diſſeiſor, &c. and this ſeemeth vnto them for two cauſes: One is, that hee that is out of the Realme, cannot haue knowledge of the Diſſeiſin made vnto him by vnderſtanding of the Law, no more than that a thing done out of the Realme may bee tried within this Realme by the oath of 12. men, and to compell ſuch a man to make continuall claime, which by the vnderſtanding of the Law can haue no knowledge or Coniſance of ſuch Diſſeiſin made or done, this ſhall be inconuenient, namely, when ſuch a diſſeiſin is done vnto him, whē hewas out of the Realme, & alſo the dying ſeiſed was done when hee was out of the realme, for in ſuch caſe hee may not by

non appoſuerit, vt ſi toto tempore litigij fuit vltra mare quacunque occaſione. And this is alſo agreeable with our yeare Bookes.

¶ *Nient pluis que choſe fait hors del royalm poet eſte trie deins le royalm per le ſerement de* 12. And in this rule of Law there is warily and truly put by Littleton, theſe words (by the oath of 12. men) meaning by a Jury. For by certificate a thing done beyond Sea may bee tried, as Littleton himſelfe, Sect.102. hath ſet downe. And all matters done out of the Realme of England concerning warre, combate, or deeds of armes ſhall bee tried and termined before the Conſtable and Marſhall of England, before whom the triall is by witneſſes, or by combate, and their proceeding is according to the Ciuill Law, and not by the oath of 12. men, as Littleton here ſpeaketh.

41.E.3.2.& 3. *Vide Sect.102.*

1.H.4.cap.14.13.H.4.fol.4. 48.E.3.2.& 3.

This rule here rehearſed by Littleton is worthy of explication. If an alien (for example borne in France) bring a reall Action, and the tenant plead that the Demandant is an alien borne vnder the obedience of the French King, and out of the leigeance of the King of England: ſhall this caſe want triall becauſe the matter alleaged is out of the Realme: then by the fiction of this plea no demandant ſhall recouer, therefore in this caſe, the Demandant ſhall reply, that hee was borne at ſuch a place in England within the Kings leigeance, and hereupon a Jury of 12. ſhall bee charged, and if they haue ſufficient euidence that hee was borne in France, or in any other place out of the Realme, then ſhall they find, that hee was borne out of the Kings alleageance, and if they haue ſufficient euidēce that he was borne in England, or Ireland, or Iernſey or Ierſey, or elſe where within the Kings obedience, they ſhall find that hee was

20.E.3.*garrant.*34.27. *Aſſ.*24.32.*H.*6.25.15.*E.*4. 15.7.*H.*6.15.1.*R.*3.4. 6.*H.*7.6.7.*H.*7.8.*F.N.B.* 196.29.*Aſſ.*11.13.*E.*1. *mord.*47.12.*H.*3.*ibid.*55. *Lib.*7.*fol.*26.27.*Calvins caſe.* *Lib.*6.*fol.*47.*Dowdales caſe.*

was borne within the Kings leigeance. And this hath euer beene the pleading and manner of triall in that case. And so it is in the case that Littleton here putteth, if a man in auoydance of a fine or a discent, alleadge that he was out of this Realme in Spaine, at the time of leuying of the fine and at the time of the disseisin and discent, the aduerse party

mẽt serroit si tiel disseisee fuit deins le Royalme al temps del disseisin, ou al temps del mozant del disseisour.

possibilitie after the common presumption make continuall claime: But otherwise it should be if the Disseisee were within the Realme at the time of the Disseisin, or at the time of the dying seised of the Disseisor.

may alleadge that hee was at such a place in England, &c. whereupon issue shall bee taken, and then in euidence hee may proue that he was out of the Realme, &c. which upon sufficient euidence the Iurie ought to find. And in both these cases and the like in a speciall verdict the Iury may find that hee was borne beyond Sea, or was beyond Sea at that time, &c.

The statute of 25.E.3. De proditionibus doth declare, that it is Treason by the Common Law to adhere to the enemies of the King within the Realme, or without, if hee be thereof prooueablement attaint of ouert fact, and that he shall forfeit all his Lands, &c. A man must not imagine that seeing by the Common Law declared by authoritie of Parliament that adhering to the Kings Enemies without the Realme is high Treason, and that the Delinquent may be attainted thereof, &c. that this should want triall, for then the iudgement of the Common Law and declaration of the Parliament should be illusorie, which no well aduised man will thinke in a matter of so great consequence. But certaine it is that for necessities sake the adherencie without the Realme must be alleaged in some place within England. And if upon euidence they shall find any adherencie out of the Realme, they shall find the Delinquent guiltie. But most commonly they indited him (if he had lands) in some countie where his lands did lye, that were to be forfeited, and this as appeareth in our bookes was the Common vse. And so it is declared by the Statute (*) of 33.H.8. and that it shall bee tried by 12. men of the Countie where the Kings Bench shall sit, and bee determined before the Iustices of that Bench, or else before such Commissioners, and in such shire of the Realme, as shall be assigned by the Kings Maiesties Commission, and this Statute for this point remayneth in force at this day, and so it was resolued (a) by all the Iudges in my time, viz. in 33.Eliz. in the case of Orurcke. And Anno (b) 34.Eliz. in Sir Iohn Perots case done in Ireland, for that is out of the Realme of England, and the case (c) in Mich.19. & 20.Eliz. was vtterly denied, & Sir Christopher Wray himselfe (who is supposed to giue his opinion in that case) protested that he neuer gaue any such opinion, but did hold the contrary. When part of the Act, especially the originall is done in England, and part out of the Realme, that part that is to be performed out of the Realme, if issue be taken thereupon shall be tryed here by 12. men, and these 12. men shall come out of the place where the writ is brought. For example (which euer doth illustrate) it was couenanted by Indenture, by Charter partie, that a Ship should sayle from Blackney Hauen in Norfolke, to Muttrel in Spaine, and there remayne by certaine dayes.

5.E.2.triall.54.

(*) 33.H.8.cap.2. Stamford.pl.cor 90.

(a) 33.Eliz. case Orwicke.
(b) 34.Eliz. case de Sir Iohn Perot.
(c) Mich.19. & 20.Eliz. Dier 360.

In an Action of Couenant brought vpon this Charter partie, the Indenture was alleaged to be made at Thetford in the Countie of Norfolke, and vpon pleading the issue was ioyned whither the said Ship remayned at Muttrell in Spaine by the said certaine dayes. And it was adiudged that this issue should be tried at Thetford where the action was brought, because there the contract toke his originall by making of the Charter partie, and so hath it beene often adiudged in such like case.

43.E.3.3.11.H.7.16. 1.R.3.4.

Pasch.28.Eliz. in allium de vn couenant inter Euangelist Constantine Pl. & Hugigyn defendant in the Kings Bench. Lee.6.fol.47. Dowdales case. Vide 32.H.6.25. 43.E.3.3.11.H.7.16. 2.E.2.obligation 13.

An Obligation made beyond the Seas may bee sued here in England in what place the Plaintife will. what then if it beare date at Burdeaux in France? where shall it be sued? And answere is made, that it may be alleaged to be made In quodam loco vocat' Burdeaux in France, in Islington in the Countie of Middlesex, and there it shall be tried, for whether there be such a place in Islington or no, is not trauersable in that case. These points are necessary to bee knowne in respect of the varietie of opinions in our Bookes. And of these thus much shall suffice, and now is Littleton worthy to be heard.

¶ *Per entendement de le ley.* Vide, for intendement of Law, Sect. 99.100.110.293 377.393.406.367.462.463.&c.439.

Entendement de la ley.

¶ *Ceo serr' inconuenient.* Here also as hath beene often said appeareth, that argumentum ab inconuenienti is strong in Law.

Vide Sect.369.

¶ *Auterment est si le disseisee fuit deins le royalme al temps del disseisin, &c.* So as if a man be disseised before he goeth ouer Sea, or commeth into the Realme againe before the Discent, the Discent shall take away his entrie.

Sect

Section 441.

CVNauter matter ils allegeont pur prouer que deuant lestatute fait en le temps de Roy E.3. An. 34. cap. 16. de son raigne, per quel estatute nonclaime est ouste, &c. le ley fuit tiel, que si fin fine soit leuy de certaine terres ou tenements, si ascun que fuit estrange al fine auoit droit dauer & recouer mesmes les terres ou tenements, sil ne venust & fist son claime a ceo deins lan & le iour procheine apres le fine leuie, il serra barre a touts iours, Quia dicebat', finis finem litib' imponebat. Et que la ley fuit tiel, il est prouue per lestatute de Westminster 2. De donis conditionalibus, Iou il est parl' que si fine soit leuie de les tenements en taile, &c. Quod finis ipso iure fit nullus, nec habeant hæred', aut illi ad quos spect' reuersio (licet fuerint plenæ ætat', in Anglia, & extra prisonam) necessitat' apponere clameum suum, &c. Issint ceo

AN other matter they alleadge for a proofe, that before the Statute of King *Edward* the Third, made the 34. yeare of his Raigne, by which statute Nonclaim is ousted, &c. the Law was such, that if a fine were leuied of certaine Lands or Tenements, if any that was a stranger to the fine had right to haue and to recouer the same Lands or Tenements, if he came not, and made his claime thereof within a yeare and a day next after the fine leuied, he shall be barred for euer, *Quia dicebatur quod finis finem litibus imponebat.* And that Law was such, it is proued by the Statute of West. the 2. *De donis conditionalibus*, where it is spoken if the fine bee leuied of Tenements giuen in the taile, &c. *Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necessitat' apponere clameum suum.* So it is proued,

CHere it appeareth, what the Common Law was before the said Statute, for Non-claime vpon a fine leuied. But now since Littleton wrote by the Statute of 4.H.7. fiue yeares after Proclamations made vpon the fine are giuen to him that right hath to make his Claime, or pursue his Action, where the Common Law gaue him but a yeare and a day. But this Statute of 4.H.7. extend only to fines and not to Nonclaims vpon a Iudgement in a writ of right, and therefore the said Statute of 34.E.3. here cited by Littleton which ouzeth Nonclaims only to fines leuied, extendeth not to a iudgement in a writ of right at this day, and therefore the Common Law in that case remayneth to this day, viz. that claime must bee made within a yeare and a day after iudgement. Also if a fine be leuied without Proclamations, or without so many as the Law requireth, then the Statute of Nonclaime doth extend to such a fine.

34.E.3.161

4.H.7.cap.24. *See aforesaid this Statute, as the Statute of* 32.H.8.cap.36. *well expounded in my Reports. Lib.3.fol.44.45. &c. case del fines per totum. Lib.1.fol.56. 97. in Shelleys case. lib.2. fol. 93. Bingham case. lib.8. fol. 100. Lochfords case. lib.9. fol. 139.140.141. Beaumonts case. lib.10. fol.47.b. Lampets case & 99.a.lib.9.fol 105. 106. Margaret Podgers case. lib.5.fol.124. Saffyns case. lib. 10.96.97. Seymors case lib.8. fol.72. Greseys case lib.11.fol. 69.71.78. Vide Com. in Smith & Stapl. case, & in Stowel case & Howels case & Glanvil lib.13.cap.11. Bract.435. Fleta lib.6.cap.53. Brit.216.*

CDicebatur finis, quia finem litibus imponebat. Here you may obserue the Etymologie of a fine. And herewith agreeth (a) Antiquitie, Finis ideo dicitur finalis concordia quia imponit finem litibus. And after the example (b) of Littleton it is good to search out the Etymologie or right derivation of words for ignoratis terminis ignoratur & ars, as hath bin often obserued in other places. And the Ciuilians call this iudiciall concord, Transactionem iudicialem de re immobili.

(a) *Glanvil. lib.8.cap.3. Bract. lib.5.fol.435. Fleta lib.6.cap.52.53.*

(b) *Etymologies, &c. Vide Sect.74.174.194.441. 520.592.*

CLicet

¶ *Licet fuerit plenæ ætatis, in Anglia, & extra prisonam.* In this Act of 13 E.1. De donis conditionalibus is one omitted who is added in the Statute De modo levandi fines, viz. & sanæ memoriæ (c) But a Feme-Covert had no priviledge of non-claime at the Common Law as some have said, because she had a husband that might make claime for her. But yet Bracton saith, Item excusatur uxor quæ sub potestate viri supposita quod clameum non apposuerit licet mittere possit. And citeth a judgement in the point, Trin. 4.H.3. in Cusins case But Fleta saith, Excusatur si fuerit uxor alicujus, si fuerit per virum impedita, quod non potuit apponere clameum. Also they in reuersion or remainder expectant upon any estate of freehold were barred by the Common Law, and yet they could make no claime, because as hath beene said, it belonged to the particular Tenant, and not to them, because their entrie was not lawfull, which was one of the principall

Stat de anno 18.E.1.

(c) *Pl.Com. Stowells case, 359*

Bracton. lib. 5. fo. 436. Britton, fo. 216.b. Fleta, lib. 6. ca. 53.

prouue, que si vn estrange home que auoit droit a les tenements, ill fuit hors de Roialme al temps del fine leuie, &c. nañ dammage, coment q̄ il ne fit son claime, &c. coment que tiel fine fuit matter de record. Per greinder reason il semble a eux q̄ vn disseisin & discent q̄ est matter en fait, ne ilsint trope greevera celuy q̄ fuit disseisie, quant il fuit hors du Royalme al temps de disseisin, et auxy al temps que le disseisor morust seisie, &c. mes que il bien poit enter, nient contrestant tiel discent.

that if a stranger that hath right vnto the tenements, if hee were out of the Realme at the time of the fine leuied, &c. shall haue no dammage, though that hee made not his claim &c. though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed shall not so grieue him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the Disseisor died seised, &c. but that he may well enter notwithstanding such discent.

cause of making of the said Statute of 34.E.3. which ousted Non-claime. But these cases of Couerture and of them in reuersion and remainder are now without question holpen, and iust prouision made for the saning of their rights and titles by the said Statute of 4.H.7. as by the said act appeareth.

Sect. 442.

¶ *Arraigne vn assise.* To arraigne the Assise is to cause the Tenant to bee called to make the pleint, and to set the cause in such order as the Tenant may be inforced to answer thereunto, and is derived of the French word Arraigner, which signifieth to order or set in right place. An Arraignement is sometime called an Astitution of the Verbe Astituo compounded of Ad and Statuo, that is to place, or set in order one by another. In the same sence that Littleton here vseth it, it is vsed when an appeale is

¶ Item, Quære si home soit disseisi, et il arraigne vn Assise envers le disseisor, et les recognitors de l'assise chantā pur le plaintife, et les Justices dassise voyle estre aduises ō lour iudgment, tanq̄ al prochein assise, &c. Et en le dementiers le disseisor morust seisie, &c. si le dit suit del

ALso inquire if a man be disseised, and he arraigne an assise against the disseisor, and the recognitors of the assise chante for the plaintise, and the Iustices of assise will bee aduised of their iudgements vntill the next assise, &c. and in the meane season the disseisor dieth seised, &c. yet the

del assise serra pris en ley pur le dit disseisee vn continual claime, entant que nul default fuit en luy, &c.

said suite of the assise shall bee taken in Law for the disseisee a continuall claime, insomuch that no default was in him, &c.

arraigned, both which are arraigned in French, but entred in Latyn. And it is to bee obserued that Littleton saith here Arraigne vn assise, and saith not that the Tenant is arraigned, and so of the appeale, for these are the suites of the suitor, and no man is said to be arraigned, but merely at the suite of the King, vpon an Enditement found against him, or other record wherewith he is charged. And there the arraignement of the prisoner is to take order, that he appeare, and for the certainty of the person to hold vp his hand and to plead a sufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceede.

2.&3.E.6.ca.24. towards the end. Stanf.pl.cor. 105.C.3.H.7.ca.1.

¶ *Iustices dassise.* Iustices of Assise are assigned and constituted by the King of the Iudges and Sages of the Law, and are called Iustices of Assise, for that the writs of Assise of Nouel disseisin, (which in former times were accounted Festina remedia and very frequent and common) were returnable before them to be taken in their proper Counties twice euery yeare at the least, whereupon they had authority to giue iudgement and award seisin and execution: and therefore both for the number of them in times past, and for the greater authority they had then as Iustices of Nisi prius (which was to trie issues only, except in Quare Impedit. and Assises De darreine presentment, in which cases the Iustices of Nisi prius might giue iudgement) they were denominated Iustices of Assise: And diuers Acts of Parliament haue giuen to them great authority both in Criminall causes and Common pleas. These Iustices of Assise, haue also Commissions of Oier and Terminer, of Goale deliuery, and of the peace, of association, and Si non omnes throughout their whole circuits, so as they are armed with ample, prudent, but yet ordinary iurisdiction, for all their Commissions are bounded with this expresse limitation, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ. And in former time according to the originall institution and their Commission both the Iustices ioyned both in Common pleas, and pleas of the Crowne,

Vid.Sect.514.233.234. Magna Carta, 30. W.2.ca.3.10.39. Stat.de Ebor.ca.3.4. Artic.Sup.Cart.ca.10. 4.E.3.ca.11. 7.R.2 ca. 27.E.1. De finibus ca.4. 28.E.1.de appellatis. 4.E.3.ca.2. 2.H.5.ca.8. 3.H.5 ca.7. 13.H.4.ca.7. North 2.E.3.ca.3. 2.E.3.ca.5. 14.H.6.ca.1. 21.H.6.ca.10. 3.H.7.ca.1. 33.H.8.ca.9. 34.& 35.H.8. ca.14.2.& 3.E.6.ca 24. 1.E.6.ca.7. 2.Mar.Dier. 99. 3.& 4.Eliz.Dier.205.

¶ *Si le dit suite del assise serra prise en ley, &c. vn continuall claime.* And it is holden at this day that it shall amount to a Claime, for that there was no default in him as Littleton saith. (d) Some haue obiected that if the bringing of an Assise should amount to Continuall claime, and euery Continuall claime made by the Disseisee vest the possession and freehold in him, therefore if bringing the Assise, &c. should amount to a Continuall claime that then the writ should abate But hereunto it hath beene answered in this Chapter, that a Continuall claime is an entrie by construction of Law for the aduantage of the Disseisee, but not for his disaduantage.

(d) *See before in this chapter Sect.419. Vid.Sect.416.*

In a writ of entrie Sur Disseisin against one, supposing that he had not entred but by S. who disseised him, the Tenant said that S. died seised; and the land discended to him, and prayed his age, the Plaintife counterpleaded his age, for that he arraigned an Assise against S. who died hanging the Assise, and he was ousted of his age, for that the bringing of the Assise amounted to a Claime.

24.E.3.25. 9.E.2.age.141. 15.E.3.Counterplee de gar.5.

If Tenant in Dower alien in fee with warrantie, and the heire in the reuersion bring a writ of entrie In casu prouiso, &c. and hanging the plea, the Tenant dyeth, the heire shall not be rebutted or barred by this warrantie, for that the Præcipe did amount to a Continuall claime. And herewith agreeth (*) Antiquity; Et si clameum non opposuerit, sufficit tamen si ille vel antecessor suus faciat qđ tantundē valeat, vt si placit̄ mouerit teneñ vel fecerit rem litigiosa; quia sicut plus est facto appellare, quam verbo, ita plus est clameum apponere facto, quam verbo: Et ad hoc facit de termino Sanctæ Trinitatis, Anno regni regis, H.3.15. in com. Hunt: de quadam Guldeburga, cui obiectum fuit, quod clameum non apposuit, & ipsa respondit, quod fecit, quod tantundem valet, quia tempore finis facti implacitauit tenentem per aliud breue, &c.

3.E.3.tit. garrantie 82.

(*) *Flet.lib.6. ca.52. Bract.lib.5 fo.436.*

If the goods of a Villeine (before any seisure made by the Lord) be distrained, the Lord may haue a Repleuyn, and notwithstanding before the bringing of the writ he had no property, yet the very bringing of the writ doth amount to a clayme of the goods, and vesteth the propertie in the Lord.

33.E.3.Replevin.43. 42.E.3.18.b. 9.H.6.25.

¶ *Entant que nul default fuit en luy, &c.* Hereby it is implied, that our Author enclined to this opinion, that it should amount to a Clayme, for that no default was in him, Et nemo debet rem suam sine facto aut defectu suo amittere, as the rule is.

Sect. 443.

THere first it is to bee obserued, that albeit the Freehold and inheritance is in this case in no person but in abeiance or in consideratiõ of law, yet an entrie and claime by one that hath no right shall gaine the inheritance by wrong. For here Littleton saith, and of such estate died seised, &c. And so it is in case of a Bishop, Parson, Vicar, Prebend, or any other sole Corporation. And in the statute of Merlebridge it is called an intrusion.

Merlb. ca. 28.

Secondly, that seeing by the death of the Abbot (which is the act of God) no person is able to make Continuall claime, therefore a discent during that time shall not prejudice the successor, for as hath beene said, Impotentia excusat legem. If an vsurpation be had to a Church in time of vacation, this shall not prejudice the successor to put him out of possession, but that at the next auoydance hee shall present.

F.N.B. 34. m. W. 2. ca. 5.

¶ *Nient pluis que ils sont able de suer Action, &c.* Here that which hath in this Chapter beene sayd is confirmed, viz. That the entrie or continuall claime must pursue the action.

¶ *Car le Couent nest forsque vn mort person, &c.* This is Ratio vna, but not vnica: for though the rest of the Corporation bee no more persons, as the Chapter in case of Dean and Chapter, or the commonalty in case of Maior and Commonalty; yet cannot they when there is no dean or maior, make claim, because they haue neither abilitie nor capacitie to take or to sue any Action, as our Author here saith.

¶ *Car en temps de*

¶ Item Quære si vn Abbe de vn Monastery morust, et durant l'temps de vacation, vn hõe tortiousemẽt enter ẽ certaine parcel de terre del monastery, claymant la terre a luy et a ses heires, et de tiel estate morust seisie, et la terre discendist a son heir, et puis apres vn est elect et fait Abbe de mesme la Monasterie, si mesm̃ Labbe poit enter sur le heire ou nemy. Et il semble a ascuns que Labbe bien poit enter en ceo cas, pur ceo q̃ le Couent en temps de vacac̃ ne fuit ascun person able de faire continuall claime, car neint pluis que ils sont person abl' ỏ suer Action, nient pluis ils sont able de faire continuall Clayme, car le Couent nest forsque vn mort corps sauns Teste car en temps de Vacation vn graunt fait a eux, ou per eux est voyd, & en cest case Labbe ne poit auer Briefe Dentre sur Disseisin enuers le

ALso inquire if an Abbot of a Monasterie die, and during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monasterie, claiming the land vnto him and his heires, and of that estate dyeth seised, and the land descendeth vnto his heires, and after that an Abbot is chosen, and made Abbot of the Monastery, a question is, if the Abbot may enter vpon the heire or not. And it seemeth to some, That the Abbot may well enter in this case, for this, that the Couent in time of vacation was no person able to make continuall claime, for no more thã they be personable to sue an Action, no more bee they able to make continuall claime, for the Couent is but a dead bodie without Head, for in time of vacation a Grant made vnto them is voyd, and in this case an Abbot may not haue a Writ of *Entrie* vpon *Disseisin*, against the Heire, for

le heire, put ceo que il ne fuit vnques diſſeiſe, et ſi Labbe ne puiſſoit enter en ceo caſe, donques il ſerra mis a ſon Briefe de Droit, &c. le quel ſerra trope dure pur le meaſon, per que ſẽble a eux, que Labbe bien poit enter, &c.

this, That hee was neuer diſſeiſed. And if the Abbot may not enter in this caſe, then hee ſhall bee put vnto his Writ of Right, &c. which ſhall bee hard for the Houſe. By which it ſeemeth to them, that the Abbot may well enter, &c.

Quæras de dubijs legẽ bene diſcere ſi vis: Quære dat ſapere, quæ ſunt legitima vere.

Quæras de dubijs, Legem bene diſcere ſi vis: Quærere dat ſapere quæ ſunt legitima vere.

vacation vn Graunt fait a eux ou per eux, eſt void &c. And the reaſon is, becauſe the bodie politique, ſuſpect is capable, is not compleat, but wanteth the Head. But this is to bee vnderſtood of an immediate Grant, for if during the vacation of the Abbathie of Dale, a Leaſe for life, or a gift in Tatle be made, the remainder to the Abbot of Dale and his ſucceſſors, this remainder is good, if there bee an Abbot made during the particular eſtate.

2.H.7.13.40. *Aſſ.* 26. 34.E.3. *Garrantie* 69.

If there be Maior and commonaltie of D. and the Maior dieth, a Grannt made to the Maior & Cõmonalty of D. is void for the cauſe aforeſaid, but in that caſe if a Leaſe for life be made, the remainder to the Maior and Commonaltie of D. the remainder is good, if there bee a Maior elected during the particular eſtate.

¶ *Poet enter, &c.* Here by this (&c.) is implied, Or make his continuall claime in ſuch ſort as hath beene before expreſſed.

¶ Quæras de dubijs, Legem bene diſcere ſi vis:
Quærere dat ſapere quæ ſunt legitima vere.

Here Littleton expreſſeth an excellent meanes to attaine to the reaſon of the Law, by enquiring of, and conference had with learned men, of doubtfull caſes:

Inter cuncta leges, & percunctabere Doctos. *Horat.*

For as Collatio peperit artes, ſo Collatio perficit artes: And this muſt bee continuall, for as knowledge increaſeth, ſo doubts therewith increaſe alſo; Creſcente ſcientia, creſcunt ſimul & dubitationes.

And here Littleton citeth verie aptly two Verſes, for it is truly ſaid, That Authoritates Philoſophorum, medicorum & Poetarum ſunt in cauſis allegandæ & tenendæ: And our Author doth cite a verſe for memorie, but it is worthie of memorie.

Chap.8. Of Releaſes. Sect.444.

¶ Releaſes ſont en diuers manners, ceſtaſcauoir, Releaſes de tout le droit q̃ home ad en terres ou Tenements, et Releaſes de Actions perſonals et reals, et

Releaſes are in diuers manners, *viz.* Releaſes of all the right which a man hath in Lands or Tenements, and Releaſes of Actions

¶ Here our author beginneth with a diuiſion of Releaſes.

Vi. Mir.ca.2.§.17 V. Brit. 101. Bract.li.5. Tract.de Except. & Lib.4.fo.318.b. Flet.lib cap.14.

Theſe words muſt be referred thus: Releaſes are of two ſorts, viz. A releaſe of all the right which a man hath either in lands and tenements, or in Goods and Chattels: or there is a Releaſe of Actions Reall, of or in lands or tenements; or Perſonall, of or in Goods

v Sect.492.

Goods or Chattels: or mixt, partly in the Realty, and partly in the Personaltie.

¶ *Release*. Relaxatio: Of the Etymologie of this word you haue heard before. Fleta (a) calleth it, Carta de quiera clamantia.

(a) *Flet.vb.sup.*

¶ Nouerint vniuersi per præsentes, &c. **Here** Littleton sheweth Presidents of Releases of right: and Presidents doe both teach and illustrate, and therefore our Student is to bee well stored with Presidents of all kinds.

Bract.li.4.fo.308.Fle.vb.sup. 9.H.6.35.24.E.3.27. 13.H.4.Entr.conseab.57.

¶ Remisisse, relaxasse, & quietum clamasse. **Here** Littleton sheweth, That there be 3. proper words of Releas, and bee much of one effect: besides, there is Renũciare, acquietare, & there be many other words of releas, as if the lessor grants to the lessee for life, That he shall be discharged of the Rent, this is a good Release, Vide Sect.532.

And it is to bee vnderstood, That there bee Releases in Deed, or Expresse: Releases, whereof Littleton heere hath shewed an example. These Expresse Releases must of necessitie be by Deed. There be also Releases in Law, and they are sometime by Deed, and sometime without Deed. As if the Lord disseise the Tenant, and maketh a Feoffement in fee by Deed or without Deed, this is a release of the Seignorie. And so it is if the Disseisee disseise the heire of the Disseisor, and make a Feoffement in fee by Deed or without Deed, this is a release in Law, of the right. And the same Law it is of a right in Action.

27 H.8.29.of anvse.34.H.6. 44.of an attaint.3.E.3.38. 21.E.4.81.Pl.Com.Delamereschese.

8.E.4.3.21.E.4.2.

If the Obliger make the Obligor his Executor, this is a release in Law of the Action, but the dutie remaines, for the which the Executor may retaine so much goods of the Testator.

11.H.7.4.20.H.7.29. 8.E.4.3.

If the Feme Obliger take the Obligor to husband, this is a release in Law. The like law is if there be two Femes Obligees, and the one take the Debtor to husband.

If an Infant of the age of seuentæne yeares release a debt, this is voyd. But if an infant make the Debtor his Executor, this is a good release in Law of the debt.

But if a Feme Executrix take the Debtor to husband, this is no release in Law, for that should be a wrong to the Dead, and in Law worke a Deuastauit, which an Act in Law shall neuer worke. And so it was adiudged in the Kings Bench, Mich.30.& 31.Eliz. in which case I was of Councell.

50.E.3.24. 32.E.3.Tit.Scire fac.102.

But it is to be obserued, That there is a diuersitie betweene a Release in Deed, and a release in Law: for if the heire of the Disseisor make a lease for life, and the Disseisee release his right to the Lessee for his life, his right is gone for euer. But if the Disseisee doth disseise the heyre of the Disseisor, and make a Lease for life, by this release, in Law the right is released but during the life of the Lessee: for a release in Law shall be expounded more fauourable, according to the intent and meaning of the parties, than a release in Deed, which is the act of the partie, and shall

auters choses. Releases de tout le droit que homes ont en Terres ou Tenements, &c. sont communement fait en tiel forme ou de tiel effect. Sect.444.

¶ Nouerint vniuersi per præsentes me A. de B. remisisse, relaxasse, & omnino de me & hæredib⁹ meis quietum clamasse: *vel sic*, Pro me & hæredibus meis quietum clamasse C. de D. totum ius, titulum, & clameum quæ habui, habeo, vel quouismodo in futur habere potero, de, & in vno messuagio cum pertinentijs in F. &c. **Et est a scauoire, que ceux Verbs**, Remisisse, & quietum clamasse **sont de vn tiel effect, sicome tiels Verbs**, Relaxasse.

ctions personalls and realls, & other things. Releases of al the right which men haue in lands & tenements &c. are commonly made in this forme, or of this effect:

Know all men by these Presents, That I A. of B. haue remised, released, and altogether from me and my Heires quiet claimed: or thus, *For mee and my Heires quiet claimed to C. of D. all the right, title, and claim which I haue, or by any meanes may haue, of and in one messuage, with the appurtenances in F. &c.* And it is to bee vnderstood, that these words, *Remisisse, & quietum clamasse*, are of the same effect as these words, *Relaxasse*.

ſhall be taken moſt ſtrongly againſt himſelfe, and ſo in the caſe aforeſayd, where the Debtor is made Executor.

¶ Totum ius, titulum, & clameum. **But note, that** Ius or **right** in generall ſignification includeth not only a right for the which a Writ of right doth lie, but alſo any title or claime either by force of a Condition, Mortmaine or the like, for the which no action is giuen by Law, but only an entrie.

Section 446.

¶ Item ceux parolx q̄ ſont communement mis en tielx faits de releaſes, &c. (quæ quouiſmodo in futurum habere potero) **ſont ſicome voides en le ley, car nul droit paſſa per vn releas, forſque le droit que le releſſor ad al temps de le releas fait, Car ſi ſoit pier & fits, & le pier ſoit diſſeiſie, et le fits (viuant ſon pier) releſſa per ſon fait a le diſſeiſor, tout le droit que il ad, ou auer puiſſoit, en meſmes les tenemēts ſans clauſe de garrantie, &c. et puis le pier morust, &c. le fits poit loyalment enter ſur la poſſeſſion le diſſeiſor, pur ceo que il nauoit droit en la terre en la vie ſon pier, mes le droit diſcendiſt a luy per diſcent apres le releas fait, p̄ le mort ſon pere, &c.**

ALſo theſe words which are commonly put in ſuch Releaſes, s. (*quæ quouiſmodo in futurum habere potero*) are as voide in Law, for no right paſſeth by a Releaſe, but the right which the Releaſor hath at the time of the Releaſe made. For if there Father and Sonne, and the Father bee diſſeiſed, and the Sonne (liuing his Father) releaſeth by his deed to the diſſeiſor all the right which he hath or may haue in the ſame tenements without clauſe of warrantie, &c. and after the Father dieth, &c. the Sonne may lawfully enter vpon the poſſeſſion of the Diſſeiſor, for that hee had no right in the land in his fathers life, but the right diſcended to him after the Releaſe made by the death of his Father, &c.

¶ NOte, a man may haue a preſent right, though it cannot take effect in poſſeſſion, but in futuro.

As hee that hath a right to a reuerſion or remaynder, and ſuch a right hee that hath it, may preſently releaſe: But here in the caſe which Littleton puts where the Sonne releaſe in the life of his father, this releaſe is void (a) becauſe hee hath no right at all at the time of the releaſe made, but all the right was at that time in the Father, but after the deceaſe of the Father, the Sonne ſhall enter into the Land againſt his owne Releaſe.

(a) *Britton fol.*101. 17.*E.*3.67. 42.*E* 2 21. 10.*H.*6.4. 25.*Aſſ* 7. 27.*E.*3.*cx.cation* 130.

The Baron make a Leaſe for life and dieth, the Releaſe made by the wife of her Dower to him in reuerſion is good, albeit ſhee hath no cauſe of Action againſt him in præſenti.

16.*E.*3.*barre* 245. *Hoes caſe* 5.*part.fol.*70.71.

¶ *Sans clauſe de garrantie.* **For if there** be a warrantie annexed to the releaſe, then the Sonne ſhall be barred. For albeit the releaſe cannot barre the right for the cauſe aforeſaid, yet the warrantie may rebutt, and barre him, and his heires of a future right which was not in him at that time: and the reaſon (which in all caſes is to be ſought out) wherefore a warrantie being a Couenant reall ſhould barre a future right, is for auoyding of circuitie of action (which is not fauoured in Law; as he that made the warrantie ſhould recouer the Land againſt the Tenant, and he by force of the warrantie to haue as much in value againſt the ſame perſon: yet is there a diuerſitie betweene a warrantie and a Feoffment, (b) for if there be Grandfather, Father, and Sonne, and the Father diſſeiſeth the Grandfather, and make a feoffment in

20.*H.*6.39.

(b) 39.*H.*6.43. 21.*E.*4.81. 15.*E.*4.*tit.entr.cong.*21. 9.*H.*7.1.*b.*2.*E.*3.38.

10. E. 3. confirmation 24. 8. E. 2. garr. 62. 11. H. 4. 33. 43. E. 3. 17. 42. E. 3. 24. per Frowden. 17. E. 3. 67. Lib. 1. fol. 112. 113. in Albanies case.

in fee, the Grandfather dieth, the Father against his owne feoffment shall not enter, but if he die, his sonne shall enter. and so note a diuersitie betweene a Release a Feoffment, and a Warrantie. a Release in that case is voide; a Feoffment is good against the feoffor, but not against his heire, a warrantie is good both against himselfe and his heires.

And here are three diuersities worthy of obseruation, viz. First, betweene a Power as an Authoritie, and a Right. Secondly, betweene Powers and Authorities themselues. Thirdly, betweene a Right and a Possibilitie.

As to the first, if a Man by his last will deuiseth that his Executors shall sell his Land, and dieth, if the Executors release all their right and title in the Land to the heire, this is void, for that they haue neither right nor title to the Land, but only a bare Authoritie, which is not within Littletons case of a Release of a right. And so it is if cesty que vse had deuised that his feoffees should haue sold the Land. Albeit they had made a feoffment ouer yet might they sell the vse, for their Authoritie in that case is not giuen away by the Liuery.

15. H. 7. 11.

As to the second there is a diuersitie betweene such Powers or Authorities as are only to the vse of a stranger, and nothing for the benefit of him that made the release (as in the case before) and a Power or Authoritie which respecteth the benefit of the Releasor, as in these diuers powers of reuocation, when the feoffor, &c. hath a power to alter, change, determine, or reuoke the vses (being intended for his benefit) he may release, where the estates before were determinable, he may by his release make them absolute, and seclude himselfe from any alteration or reuocation, as it hath beene resolued, which diuersitie you may reade in (m) Albanies case.

(m) Lib. i. Albanies case, vbi supra. Lib. 5. Hoes case 70. 71. 10. H. 6. 4.

As to the third, before Iudgement the Plaintife in an Action of debt releaseth to the baile in the Kings Bench all demaunds, and after Iudgement is giuen, this shall not barre the Plaintife to haue Execution against the bayle, because at the time of the release her had but a meere possibilitie, and neither Ius in re, nor Ius ad rem, but the dutie is to commence after vpon a contingent, and therefore could not be released presently. So if the Conusee of a Statute, &c. release to the Conusor all his right in the Land, yet afterwards her may sue Execution, for he hath no right in the land till Execution, but only a possibilitie, and so haue I knowne it adiudged.

25. Ass. p. 7. 27. E. 3. execution 130. pasch. 38. Eliz. Rot. 321. inter Burough & Gray.

Sect. 447.

49. E. 3. 28.

¶ DE tout le droit. This must be intended of a bare right, and not of a release of a right, whereby any estate passeth, as to a Lessee for yeares, &c. as shall bee said hereafter. Also it must bee intended of a Release of a right of freehold at the least, and not to a right for any tearme for yeares or chattle reall, as if Lessee for yeares bee ousted, and hee in the reuersion disseised, and the Disseisor maketh a Lease for yeares, the first Lessee may release vnto him. All which is implyed in the first &c. Also in some case a release of a right made to one that hath neither freehold in Deed, nor freehold in Law is good and auaileable in Law, (c) as the Demaundant may release to the vouchee, and yet the vouchee hath nothing in the land, but the reason of that is for that when the vouchee entreth into the warrantie, he becommeth Tenant to the Demandant, and may render the Land to him, in respect of the priuitie, but an estranger cannot release to the vouchee because In rei veritate, he is not tenant of the Land.

(c) 7. E. 4. 13. 20. H. 6. 29. 5. H. 7. 41. 18. E. 3. 12. 8 H. 4. 5. 5. E. 3. 36. 5. E. 3. 46. Vide Sect. 490. 491.

¶ Item en releases de tout le droit que home ad en certein terres, &c. il couient a celuy a que le releas est fait en ascun cas, que il ad le franteneme̅t en les terres en fait, ou en ley, al temps de releas fait, &c. car en chescun cas lou celuy a que le releas est fait ad franktenement en fait, ou frankte-nement en ley, al temps del releas, &c. donque le releas est bone.

ALso in Releases of all the right which a man hath in certaine lands, &c. it behooueth him to whom the Release is made in any case that hee hath the freehold in the Lands, in Deed, or in Law at the time of the Release made, &c. for in euery case where he towhom the Release is made hath the freehold in Deed or in Law at the time of the Release, &c. there the Release is good.

(d) An

(d) And ſo it is if the Tenant alien hanging the Præcipe, the releaſe of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the land. (d) 10.E.4.14. 12.Aſſ.p.41.

In time of vacation an Annuity, that the perſon ought to pay may be releaſed to the Patron in reſpect of the priuity, but a Releaſe to the Ordinary only ſerueth not good, becauſe the Annuity is temporall. 8.E.3.21. 46.E.3.6.b. 8.H.6.23. 21.H.7.41.

If a Diſſeiſor make a Leaſe for life, the Diſſeiſee may releaſe to him, for to ſuch a Releaſe of a bare right there needs no priuity as ſhall be ſaid hereafter. But if the Diſſeiſor make a Leaſe for yeares, the Diſſeiſee cannot releaſe to him, becauſe he hath no eſtate of Freehold. And yet in ſome caſe a right of Freehold ſhall drowne in a chattell, as if a Feme haue a right of Dower ſhe may releaſe to the Gardein in Chiualrie, and her right of Freehold ſhall drowne in the chattle, becauſe the writ of Dower doth lye againſt him, and the heire ſhall take aduantage of it. And it is to be obſerued, that by the ancient maxime of the Common Law a Right of entrie, or a Choſe in action cannot be granted or tranſferred to a ſtranger, and thereby is auoyded great oppreſſion, inturie and iniuſtice. Nul charter, nul vende, ne nul done vault perpetualment ſi le donor neſt ſeiſie al temps de contracts de 2. droits. s. del droit de poſſeſsion, & del droit del propertie. Mirror.ca.2.§.17. And therefore well ſaith Littleton, that hee to whom a Releaſe of a right is made muſt haue a freehold.

For the better vnderſtanding of tranſferring of naked rights to lands or tenements either by Releaſe, Feoffment, or otherwiſe, it is to be knowne, that there is Ius proprietatis, a right of ownerſhip, Ius poſſeſsionis a right of ſeiſin or poſſeſſion, and Ius proprietatis & poſſeſsionis, a right both of propertie and poſſeſſion: and this is anciently called Ius duplicatum, or Droit droit. Mirror vbi ſupra. Bracton, lib.2 fo.32. Britton fo.89.121. Bracton, lib.5.fo 372. For example, if a man be diſſeiſed of an acre of land, the Diſſeiſee hath Ius proprietatis, the Diſſeiſor hath Ius poſſeſsionis, and if the Diſſeiſee releaſe to the Diſſeiſor, hee hath Ius proprietatis & poſſeſsionis. And regularly it holdeth true, that when a naked right to land is releaſed to one that hath Ius poſſeſsionis, and another by a meane title recouer the land from him, the right of poſſeſſion ſhall drawe the naked right with it, and ſhall not leaue a right in him to whom the Releaſe is made. For example, if the heire of the Diſſeiſor being in by diſcent A. doth diſſeiſe him, the Diſſeiſee releaſe to A. now hath A. the meere right to the land. But if the heire of the Diſſeiſor enter into the land, and regaine the poſſeſſion, that ſhall drawe with it the meere right to the land, and ſhall not regaine the poſſeſſion only, and leaue the meere right in A. but by the recontinuance of the poſſeſſion, the meere right is therewith veſted in the heire of the Diſſeiſor.

But if the Donee in tayle diſcontinue in fee, now is the reuerſion of the Donor turned to a naked right, if the Donor releaſe to the Diſcontinuee and die, and the iſſue in taile doth recouer the land againſt the Diſcontinuee, he ſhall leaue the reuerſion in the Diſcontinuee, for the iſſue in taile can recouer but the eſtate taile only, and by conſequence muſt leaue the reuerſion in the Diſcontinuee, for the Donor cannot haue it againſt his releaſe: but if the Diſſeiſee enter vpon the heire of the Diſſeiſor, and infeoffe A. in fee, and the heire of the Diſſeiſor recouer the whole eſtate that ſhall drawe with it the meere right and leaue nothing in the Feoffee. Note the diuerſities. Another diuerſitie is obſeruable when the naked right is precedent before the acquiſition of the defeaſible eſtate, for there the recontinuance of the defeaſible eſtate ſhall not drawe with it the preceding right. (e) As if the Diſſeiſee diſſeiſe the heire of the Diſſeiſor, albeit the heire recouer the land againſt the Diſſeiſee, yet ſhall hee leaue the preceding right in the Diſſeiſee. So if a woman that hath right of Dower diſſeiſe the heire, and he recouer the land againſt her, yet ſhall he leaue the right of Dower in her. (e) 5.Aſſ.1.10.Aſſ.16. 50.E.3.7.4 E.3.Eſſopp.133. 30.Aſſ.5.11.E.3.Entrie,56. 12.Aſſ.41. 27 E.3.84.488.

Another diuerſity is to be noted, when the meere right is ſubſequent, and tranſferred by act in Law, there albeit the poſſeſſion be recontinued, yet that ſhall not drawe the naked right with it, but ſhall leaue it in him; as if the heire of the diſſeiſor bee diſſeiſed, and the Diſſeiſor infeoffe the heire apparant of the diſſeiſee being of full age, and then the Diſſeiſee dyeth, and the naked right diſcend to him, and the heire of the Diſſeiſor recouer the land againſt him, yet doth he leaue the naked right in the heire of the Diſſeiſee. So if the Diſcontinuee of Tenant in taile infeoffe the iſſue in taile of full age, and Tenant in tayle die, and then the Diſcontinuee recouer the land againſt him, yet he leaueth the naked right in the iſſue. (e) But if the heire of the Diſſeiſor be diſſeiſed, and the Diſſeiſee releaſe to the Diſſeiſor vpon condition, if the Condition be broken, it ſhall reueſt the naked right. And ſo if the Diſſeiſee had entred vpon the heire of the Diſſeiſor, and made a feoffment in fee, vpon condition, if he entred for the Condition broken, and the heire of the Diſſeiſor entred vpon him, the naked right ſhould be left in the Diſſeiſee. But if the heire of the Diſſeiſor had entred before the Condition broken, then the right of the Diſſeiſee had beene gone for euer. But now let vs heare what Littleton ſaith. 23.H.8.tit. Reſtore al action Br.5. 30b.3.7.Vid.Sect.473.475. 478.487. (e) 8.E.3.16. 9.H.7.24.

Sect.448.

THere Littleton describeth what a freehold in Law is, for her had spoken before in many places of freeholds in Deed. This Bracton calleth (a) Ciuilem & naturalem possessionem seu seisinam. The naturall seisin is the freehold in deede, and the Ciuill the freehold in Law.

(a) *Bract. lib.4. fo.206.236. Britton, fo.83.b. Fleta, lib.3. ca.15. Vid. Sect.680.*

If a man leuis a fine to a man Sur conusance de droit come ceo que il ad de son done, or a Fine Sur conusance de droit tantum, these be fooffments of Record, and the Conusee hath a freehold in Law or in him before hee entereth.

42.E.3.20. 10.H.6.14. 17.E.3.78. 2.E.3.33.

Upon an exchange the parties haue neither freehold in Deed nor in Law before they enter, so vpon a partition the freehold is not remoued vntil an entrie.

11.H.4.61. 21.H.7.12.

(g) If Tenant for life by the agreement of him in the reuersion surrender vnto him; he in the reuersion hath a freehold in law in him before he enter. (b) Upon a liuery within the view no freehold is vested before an entrie.

(g) *32.E.3. barre 262. 41. Ass 2. 13.H.4. surrender, 10.*

(h) *38.E.3.12.*

If a man doth bargaine and sell land by Deed indented and inrolled, the freehold in Law doth passe presently. And so when vses are raised by Couenant vpon good consideration.

If a Tenant in a Præcipe being seised of lands in fee, confesse himself to be a Villeine to an estranger, and to hold the land in Villenage of him, the estranger by this acknowledgment is actually seised of the freehold and inheritance without any entrie. But let vs returne to Littleton.

17.E.3.77. 18.E.4.25.

¶ Franktenement en ley est, sicome vn home disseisist vn auter, et morust seisie, per q̄ les tenements discendōt a son fits, coment q̄ son fits ne entra pas les tenements, vncor̄ il ad vn franktēnt en ley, quel per force de discent est iect sur luy, et pur ceo vn releas fait a luy, issint esteant seisi de frāktenement en ley, est assets bon, et sil pr̄et feme issint esteant seisie en ley, coment que il ne vnque enter pas en fait, & morust, sonfeme serra endow.

FReehold in Law is, as if a man disseiseth another and dieth seised, whereby the tenements discend to his sonne albeit that his sonne doth not enter into the tenements, yet hee hath a freehold in law, which by force of the discent is cast vpon him, and therefore a release made to him so being seised of a freehold in Law is good enough, and if he taketh wife being so seised in law although he neuer enter in deed and dieth, his wife shal be endowed.

Sect.449.

¶ Item en ascuns cases de releases de tout le droit, coment que celuy a que le release est fait nad riens en le franktenement en fait, ne en ley, vncore le release est assets bone. Sicom̄ le disseisor lessa la terre que il ad per disseisin a vn auter pur terme de sa vie, sauant le reuersion a luy, si le disseisee ou son heire relessa al disseisor tout le droit, &c. cel

ALso in some cases of releases of all the right, albeit that he to whom the release is made hath nothing in the freehold in Deede nor in Law, yet the release is good enough. As if the disseisor letteth the land which hee hath by disseisin to another for terme of his life sauing the reuersion to him, if the disseisee or his heire release to the disseisor all the right, &c. this

cel releaſe eſt bone, pur ceo que celuy a que le releas eſt fait auoit a luy vn reuerſion al temps del releaſe fait.

releaſe is good, becauſe hee to whom the releaſe is made had in law a reuerſion at the time of the releaſe made.

HEre Littleton addeth a limitation to the next precedent Section, viz. that a releaſe of all the right may be good to him in reuerſion, albeit he hath nothing in the Freehold, becauſe he hath an eſtate in him. 7.E.4.13. 14.H.4.32.b. 41.E.3.17. 49.E.3.28. Caſe vlt.

C *Tout le droit, &c.* Or Title, Intereſt, Demand, or the like, and ſo it is if he in the reuerſion hath an eſtate for life or in taile in reuerſion as in the like caſe it appeareth in the next Section.

Sect. 450.

CEſt meſme le maner eſt, lou leas eſt fait a vn home pur terme de vie, le remainder a vn auter pur terme de auter vie, le remainder a le tierce en le taile, le remainder a le quart en fee, ſi vn eſtranger que droit ad a la terre, releſſa tout ſon droit a aſcun d eux en l remainder, tiel releas eſt bone, pur ceo que cheſcun de eux ad vn remainder en fait veſtue en luy.

IN the ſame manner it is where a Leaſe is made to a man for term of life, the remainder to another for terme of another mans life, the remainder to the third in taile, the remainder to the fourth in fee, if a ſtranger which hath right to the land releaſeth all his right to any of them in the remainder, ſuch releaſe is good, becauſe euery of them hath a remainder in Deed veſted in him.

CHere is another limitation that a Releas is good to him in the remainder, albeit hee hath nothing in the freehold in poſſeſſion, becauſe he hath an eſtate in him, as hath beene ſaid. In both theſe limitations it is to be obſerued, that the ſtate which maketh a man Tenant to the Præcipe is ſaid to be the freehold as here the ſtate of Tenant for life, and not the reuerſion in fee. 7.E.4.13. 41.E.3.17. 7.E.3.54.54. 18.E.2. Tit. Entries 74. 3.E.2.tit. Entries 7. F.N.B. 207. E.

Sect. 451.

CMes ſi le tenant a terme de vie ſoit diſſeiſie, & puis celuy q̄ ad droit (eſteant le poſſeſſion en le diſſeiſor) releſſe a vn de eux a que le remainder fuit fait tout ſon droit, cel releas eſt void pur ceo que il nauoit vn remainder en fait al temps de releas fait, forſque tantſolement vn droit del remainder.

BVt if the tenant for terme of life be diſſeiſed, & afterwards he that hath right (the poſſeſſion being in the diſſeiſor) releaſeth to one of them to whom the remainder was made all his right, this releaſe is voide, becauſe hee had not a remainder in Deed at the time of the releaſe made, but only a right of a remainder.

C *Forſque tantſolement vn droit del remainder.* For a releaſe of a right to one that hath but a bare right regularly is voyde, for as Littleton hath before ſaid, he to whom a releaſe is made of a bare right in lands and tenements muſt haue either a freehold in Deed or in Law in poſſeſſion, or a ſtate in remainder or reuerſion in fee or fee taile or for life. Vid. Sect. 434.

Section 452.

¶ By this it appeareth, That as a release made of a right to him in reuersion or remainder, shall ayd and benefit him that hath the particular estate for yeares, life, or estate Tayle, so a release of a right made to a particular Tenant for life, or in Taile, shall ayd and benefit him or them in the remainder.

If two Tenants in Common of land graunt a Rent charge of 4 c. s. out of the same, to one in fee, and the Grantes release to one of them, this shall extinguish but twentie shillings, for that the Graunt in iudgement of Law was seuerall. So it is if two men be seised of seuerall Acres, and grant a rent vt supra. But there is a diuersitie betweene seuerall estates in seuerall lands, and seuerall estates in one land, for if one be Tenant for life of lands, the reuersion in fee ouer to another, if they two ioine in a grant of a rent out of the Lands, if the grantee releaseth either to him in the reuersion, or to Tenaunt for life, the whole rent is extinguished, for it is but one rent, and issueth out of both estates, and so note the diuersitie.

¶ *Si le Tenaunt ad le fait en son poigne a pleader.* And so it is in both cases: for albeit hee in the reuersion or remainder is a stranger to the Deed when the release is made to the Tenant, and the Tenant for life or in Taile is a stranger to the Deed, when the Release is made to him in reuersion or remainder, yet seeing they are pryuies in estate, none of them in pleading shall take benefit thereof, without shewing the same in Court, which is worthie to be obserued.

35.H.6.8.

¶ *Sils ceo poient monstre.* The one cannot plead the release made to the other, without shewing of it, for that they are pryuie in estate, as hath beene seyd. The reasons of these two Sections needs no explication.

¶ Et nota, Que chescun releas fait a celuy que ad vn reuersion ou vn remainder en fait, seruera et aidera celuy que ad le Franktenement, auxybien come a celuy a que le release fuit fait, si le Tenant auoit le release en son poign̄ de pleader.

And note that euerie Release made to him which hath a Reuersion or a Remainder in Deed, shall serue and ayde him who hath the Freehold, as well as him to whom the Release was made, if the Tenant hath the release in his hand to plead.

Sect.453.

¶ En mesme le manner est lou vn Release ē fait al Tenaunt pur terme de vie, ou al Tenant en le Taile, ceo vsera a eux en le reuersion, ou a eux en le Remainder, auxybien come al Tenaunt de Franktenement, et aueront auxy grand aduauntage de cel, sils ceo poyent monstre.

In the same it is, where a Release is made to the Tenant for life, or to the Tenant in Tayle, this shall enure to them in the reuersion, or to them in the remainder, as well as to the Tenant of the Freehold, and they shall haue as great aduantage of this, if they can shew it.

Sect.

Section 454.

¶ Item ſi ſoit Seignior et tenant, et le Tenaunt ſoit diſſeiſie, et l'ſeignior releſſa al Diſſeiſee tout le droit que il auoit en l'ſeigniorie, ou en le terre, cel releaſe eſt bone, et le Seigniorie eſt extinct, et ceo eſt pur cauſe del priuity, que eſt perenter le Seigniour, et le Diſſeiſee, car ſi les auers l'diſſeiſee ſoient pris, et de eux le Diſſeiſee ſuiſt vn Repleuin eners le Seignior, il compellera le Seignior dauower ſ luy, car il auower ſur le Diſſeiſor, donques ſur l'matter monſtre lauowry abatera car le Diſſeiſee eſt Tenant a luy en droit et en la Ley.

ALſo if there bee Lord and Tenant, and the Tenant be diſſeiſed, and the Lord releaſeth to the Diſſeiſee all the right which he hath in the Seigniorie or in the Land, this Releaſe is good, and the Seigniorie is extinct: And this is by reaſon of the priuitie which is betweene the Lord and the Diſſeiſee: for if the Beaſts of the Diſſeiſee be taken, and of them the Diſſeiſee ſueth a Repleuin againſt the lord, hee ſhall compell the Lord to auow vpon him, for if hee auow vpon the diſſeiſor, thē vpō the matter ſhewen the Auowrie ſhall abate, for the Diſſeiſee is Tenant to him in right and in Law.

CHEreupon may bee collected and obſerued two diuerſities: Firſt, Betweene a Seigniorie or Rent ſeruice, and a rent Charg: for a Seigniory or Rent ſeruice may be releaſed and extinguiſhed to him that hath but a bare right in the Land. And the reaſon hereof is in reſpect of the priuitie betweene the Lord and the Tenaunt in right, for he is not only as tenant to the Auowrie, but if hee die his heire within age, he ſhall be in ward; and if of full age, hee ſhall pay reliefe, and if hee die without heire, the Land ſhall eſcheat. But there is no ſuch priuitie in caſe of a Rent-charge, for there the charge only lieth vpon the Land

The ſecond diuerſitie is betweene a Seigniorie and a bare right to land: for a Releaſe of a bare right to Land, to one that hath but a bare right, is voyd, as hath beene ſayd. But herein the caſe of our Author, a releaſe of a ſeigniorie to him that hath but a right, is good to extinguiſh the Seigniorie. *Vi.Sect.451.*

Nota, a Seigniorie, Rent, or Right, either in præſenti, or in futuro, may be releaſed ſine manner of wayes, and the firſt three without any priuitie. Firſt, To the Tenant of the Freehold in Deed or in Law. Secondly, To him in remainder. Thirdly, To him in the reuerſion. The other two in reſpect of Priuitie, as firſt, here the Lord releaſeth his Seigniorie to the Tenant being diſſeiſed, having but a right, and no eſtate at all. Secondly, in reſpect of the priuitie, without any eſtate or right, as by the Demandant to the Vouchee, or Donor to the Donee, after the Donee hath diſcontinued in fee, as appeareth hereafter in this Chapter. *Li.10.fo.48. Lampets caſe.* *Sect.455.*

¶ *Per cauſe de priuitie, &c.* See for this word (Priuitie) Sect.461.

¶ *Il compellera le Seignior dauowrer ſur luy, &c.* This is regularly true, but if the Lord hath accepted ſeruices of the Diſſeiſor, then the Diſſeiſee cannot enforce the Lord to auow vpon him, though his beaſts be taken, &c. *20.H.6.9 b. 41.E.3.28. 48.E.3.9. 2.E.4.6.a.*

If a man hath title to haue a Writ of Eſcheat, if he accept homage or fealtie of the Tenaunt, he is barred of his Writ of Eſcheat: but if he accept rent of the Tenant, that is no bar to him, for it may be receiued by the hands of a Bayliffe. (d) But ſome doe hold, that if there be Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſee die without heire, the Lord accepts rent by the hands of the Diſſeiſor, this is no barre to him. Contrarie it is if he anow for the Rent in Court of Record, or if he take a corporall ſeruice, as Homage or Fealtie, for the diſſeiſor is in by wrong: but if the Lord accept the rent by the hands of the heire of the Diſſeiſor, or of his Feoffee, becauſe they be in by title, this ſhall barre him of his Eſcheat. Which is to bee *31.E.1.Diſcent 17. 26.E.3.72. 4.H.6.21. F.N.B.144.c. (d) 7.E.6.tit.Eſcheat Br.28*

be vnderstood of a discent or feoffement, after the title of Escheat accrued: (e) for if the Disseisor make a Feoffement in Fee, or die seised, and after the Disseisee die without heire, then there is no Escheat at all, because the Lord hath a Tenant in by Title. And when Littleton wrote, the Disseisee in the case here put, should haue compelled the Lord to haue auowed vpon him, as Littleton holdeth. But now this is altered by a latter Stat. of (f) 21. H. 8. for whereas by Fines, Recoueries, Grants, and secret Feoffements, &c. made by Tenaunts to persons vnknowne, the Lords were put from knowledge of their Tenants, vpon whom by order of law they should make their Auowries, &c. It is by that Statute enacted, That if the Lord shall distreyne vpon the Lands or Tenements holden. &c. that he may auow, &c. vpon the same Lands, &c. as in Lands, &c. within his Fee or Seigniorie, &c. without naming of any person certaine, and without making auowrie vpon a person certaine. Vpon which Statute these foure poynts are to be obserued: First, That the Lord hath still election either to auow according to the Common Law, by force of the Statute, by reason of this word (May.) Secondly, Albeit the purview of the Act be generall, yet all necessarie incidents are to be supplied, and the scope and end of the Act to be taken: and therefore though he need not to make his auowrie vpon any person certaine, yet he must alledge Seisin by the Lands of some Tenant in certaine, within fortie yeares. Thirdly, That if the Auowrie be made according to the Statute, euerie Plaintife in the Repleuin or second deliuerance, be he Termor or other, may haue euery answer to the Auowrie that is sufficient; and also haue ayd, and euerie other aduantage in Law, (disclaimer onely except) for disclaime he cannot, because in that case the auowrie is made vpon no certaine person. Fourthly, where the words of the Statute be, If the Lord distreyne vpon the Lands and Tenements holden, yet if the Lord come to distreyne, and the Tenant encha's his Beasts which were within the view, out of the Land holden, and there the Lord distreyne, albeit the distresse be taken out of his Fee and Seigniorie in that case, yet is it within the said Statute, for in iudgement of Law the distresse is lawfull, and as taken within his Fee and Seigniorie, and this Statute being made to suppresse Fraud, is to be taken by Equitie.

(e) 7.H.4.17. 3.R.2. Entr. con.38. 2.H.4.8. 6.H.7.9. Vi Sect.556.

(f) 21.H.8.ca.19.

Li.9.fo.136. Ascoughs case.

27.H.8.fo.4. 32.H.8.ca.2. Lib.9.fo.36. Bucknals case.

34.H.8. Auowrie Br.113. 27.H.8.4. & 20. Bucknals case vbi supra.

Li.9.fo.22. in case Dauowric. 44.E.3.20. 11.H.7.4. 21.H.7.40. 34.H.6.18. 16.E.4.10. 6.R.2. Rescous 11.

Sect. 455.

¶ ITem si terre soit done a vn home en Taile, reseruant al Donor et a ses heires vn certaine rent si l' Donee soit disseisie, et puis le Donor relessa al Donee et a ses Heires, tout le droit que il auoit en la Terre, et puis le Donee enter en la terre sur le Disseisor, en cest case le rent est ale, pur ceo que le Disseisee al temps de releas fait, fuit tenant en droit, et en la Ley al Donor, et auowr̃ a fine force couient de estre Fait sur luy per le Donor pur le rent aderere, &c. Mes vncore rien de droit ď terres, s̃, de le droit, de le reuersion passera per tiel Release, pur ceo que le Donee a que le Release est fait, adonque nauoit riens en la Terre forsque tantsolement vn droit, et issint le droit del Terre ne puissoit adonques passer al Donee per tiel Release.

ALso if Land be giuen to a man in Taile, reseruing to the Donor and to his heires a certain rent, if the Donee be disseised, and after the Donor release to the donee and his heires all the right which hee hath in the Land, and after the Donee enter into the Land vpon the Disseisor, in this case the Rent is gone, for that the Disseisee at the time of the Release made, was Tenant in Right, and in Law to the Donor, and the Auowrie of Fine force ought to bee made vpon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, *(scz.)* of the reuersion, shall passe by such release, for that the Donee to whom the Release is made, then had nothing in the Land but onely a right, and so the right of the Land could not then passe to the Donee by such Release.

¶ Si

¶ *Si le donee ſoit diſſeiſie, &c.* This is euident by that which hath beene ſaid. But admit that the Donee maketh a feoffment in fee, and the Donor releaſe vnto him and his heires, all the right in the land, this ſhall extinguiſh the rent, becauſe the Lord muſt anoẏ vpon him, and yet the tenant in tails after the feoffment hath no right in the land. But the reaſon is in reſpect of the priuitie, and that the (m) Donor is by neceſſitie compellable to anoẏ vpon him only, for if hee ſhould anoẏ vpon the diſcontinuee, then it ſhould appeare of his owne ſhewing, that the reuerſion whereunto the rent is incident ſhould bee out of him, and conſequently the anoẏtie ſhould abate, and ſo was it (n) reſolued Trin. 18. Eliz. in the Court of Common Pleas in Sir Thomas Wiats caſe, which I heard and obſerued. And Littleton ſaith here that in caſe of the Diſſeiſin of fine force, the anoẏtis muſt be made vpon the Donee.

Vide Sect. 434. 1.H.5.tit. grant 43. 14.H.4.38.lib.3. fol.29. lib 6.58. Lampets caſe vbi ſupra.

(m) 10.E.3.26.48 E.3.8.b. 31.E.3.gard.116.5.E 4.3. 7.E.4 27. 15.E.4.13.

(n) Trin.18. Eliz. Sir Thomas Wiats caſe in Communi Banco.

¶ *Vncore riens de droit, &c. de reuerſion, &c.* Here the diuerſitie aſſigned betweene the Rent Seruice, and a bare Right to the land appeareth.

Section 456.

¶ EN meſme le manner eſt, ſi leas ſoit a vn pur terme de vie, reſeruant al leſſoẏ et a ſes heires certaine rent, ſi le leſſee ſoit diſſeiſie, et puis leſſoẏ releſſa al leſſee et a ſes heires, tout le droit que il ad en la terre, et apres le leſſee enter, coment que en ceſt cas le rent eſt extinct, vncore rien del droit de la reuerſion paſſera, Cauſa qua ſupra.

IN the ſame manner it is, if a leaſe be made to one for terme of life, reſeruing to the leſſor and to his heires a certaine rent, if the leſſee be diſſeiſed, and after the Leſſor releaſe to the Leſſee and to his heires all the right which he hath in the land, and after the leſſee entreth, albeit in this caſe the rent is extinct, yet nothing of the right of the reuerſion ſhall paſſe, *Cauſa qua ſupra.*

¶ HEreby the diuerſity is made apparant betweene a Releaſe of a Rent Seruice out of Land, and a Releaſe of right to Land in this Section.

Sect. 457.

¶ MES ſi ſoit veray ſeignioẏ et veray tenant, et le tenãt fait vn feoffm̃t en fee, le quel feoffee ne vnque deuient tenant al Seignioẏ, ſi le Seignioẏ releſſa al feoffoẏ tout ſon droit &c. ceſt releas eſt en tout void, pur ceo q̃ le feoffoẏ ad nul droit en la terre & il neſt Tenant en droit al

BVt if there be very Lord & very tenãt, and the tenant maketh a feoffment in fee, the which feoffee doth neuer become tenant to the Lord, if the Lord releaſe to the feoffor all his right, &c. this releaſe is altogether void, becauſe the feoffor hath no right in the Land, and hee is not Tenant in right to the

¶ *Veray Seignior & veray tenant.*

This is to be vnderſtood of a Lord in fee ſimple, and of a Tenant of like eſtate.

Vide Aſcughes caſe lib.9. fol. 135.136. 20.H 6.9 3.H.4. 24. 12.E.4 2. 16.H.6 ſeruice 17. 9.Eliz. Dier 257. 5.H.7.11.7.E.4.24. 20 E.3. ſeruice 131.

There bee foure manner of anoẏties foẏ Rents and Seruices, &c, viz 1. Super verum tenentem, as in the caſe here put. 2. Super verum tenentem in forma prædicta, as where a Leaſe foẏ life, oẏ a gift in tatle bee made, the remainder in fee. 3. vpon one as vpon his tenant by the manoẏ omitting (verie) and this is when the Lord hath a particular eſtate in the Seignioẏrie, and ſo ſhall the Donoẏ vpon

vpon the Donee or Lessor vpon the Lessee. 4. Sur le matter en la terre, as within his fee and Seigniorie. As where the tenant by Knights Seruice maketh a Lease for life reseruing a Rent, and die his heire within age, the Gardeine shall auow vpon the Lessee, &c. Super materiam prædictam in terris & tenementis prædictis vt infra feodum & Dominium suum.

47.E.3.fol vlt.num. 38.H.6.23.

Seignior, mes tant solement tenant quãt al auowry faire, et il ne vnques compellera le Seignior dauower sur luy, car le Seignior auowera sur le feoffee sil voile.

Lord, but only tenant as to make the auowre, and hee shall neuer compell the Lord to auow vpon him, for the Lord shall auow vpon the feoffee if he will.

21.H.8.cap.19.

Now by the Statute the very Lord may auow, as in Lands within his fee and Seigniorie, without auowing vpon any person in certaine.

Here appeareth the diuersitie betweene a Tenant in Taile, and a Tenant in Fee Simple, for albeit Tenant in Taile make a feoffment in fee, yet the right of the Entaile remains, and shall discend to the Issue in taile. But when the Tenant in fee simple make a feoffment in fee, no right at all remaine of his estate, but the whole is transferred to the Feoffee.

Also the Lord is not compellable in that case to auow vpon the Feoffor, but if her Willam Littleton here saith, he may auow on the feoffee, but so it is not as hath beene said in case of tenant in taile.

Note a diuersity betweene Actions and Acts which concerne the right, and Actions and Acts which concerne the possession only. For a Writ of Customes and Seruices lyeth not against the feoffor, nor a release to him shall extinguish the Seigniory. So if a Rescous be made an Assise shall not lie against the feoffor, and him that made the Rescous, because the feoffee is Tenant, and in Assise, the surplusage incroached shall bee auoyded. For these Actions and Acts concerne the right, but of a seisin, and an auowrie which concerne the possession, it is otherwise. And if the Lord release to the feoffor this is good betweene them as to the possession and discharge of the Arrerages, but the feoffee shall not take benefit of it, for that, as hath been said, it extendeth not to the right. But the feoffor shall plead a Release to the feoffee, for thereby the Seigniorie is extinct, as if Lessee for life doth waste, and grant ouer his estate, and the Lessor release to the Grantee, in an Action of waste against the Lessee, he shall plead the release, and yet he hath nothing in the land. And so in waste shall tenant in Dower or by the Courtesie in the like case, and the vouchee, and the Tenant in a Præcipe after a feoffment made. And so in a Contra formam collationis.

4.E.3.22.7.E.3.8.7.E.4.27 29.H.8.tit. auowry. Br. 111. Lib.3.fol.65.66. Pennants case. 7.H.4.14.

¶ *Le feoffee ne vnques deueigne tenant.* Nota, here an excellent point of Learning, viz. if there bee Lord and Tenant, and the Rent is behind by diuers yeares, and the Tenant make a feoffment in fee, if the Lord accept the Seruice or Rent of the feoffee due in his time, hee shall lose the Arrerages due in the time of the feoffor, for after such acceptance he shall not auow vpon the feoffor, nor vpon the feoffee for the Arrerages incurred in the time of the feoffor. But in that case if the feoffor dieth, albeit the Lord accept the Rent or Seruice by the hand of the feoffee due in his time, he shall not loose the Arrerages for now the Law compelleth him to auow vpon the feoffee, and that which the Law compelleth him vnto, shall not preiudice him.

2.E.4.6.34.H.6.46. 37.H.6.29.H.8. auowrie.

So it is and for the same reason, if there be Lord, Mesne, and Tenant, and the rent due by the Mesne is behind, and after the Tenant forcludge the Mesne, and the Lord receiue the Seruices of the Mesne which issue out of the Tenancie, he shall not be barred of the Arrerages which issued out of the Mesnaltie, and so if the rent be behind, and the Tenant dieth, the acceptance of the seruices by the hand of the heire shall not barre him of the Arrerages, for in these cases albeit the persons be altered, yet the Lord doth accept the seruices of him which only ought to doe them.

4.E.3.22. 47.E.3.4.

But as long as the feoffor liueth the Lord shall not bee compelled to auow vpon the feoffee, vnlesse he giueth the Lord notice, and tender vnto him all the Arrerages.

21.H.8.cap.19.

But now by the Statute the Lord may auow vpon the Lands so holden, as in lands within his Fee or Seigniory without naming of any person certaine to bee Tenant of the same, and without making of any auowrie vpon any person certaine, as hath beene said, which hath much altered the Common Law in the cases aboue said, for the benefit and safetie of the Lord.

But yet these cases are necessary to bee knowne (for which purpose I haue added them) for that the Lord may auow still at the Common Law if he will.

Sect.

Sect. 458.

¶ Autrement est lou le veray tenant est disseisie, come en le cas auantdit, car si le veray tenant que est disseisie teigne del Seignior per seruice d chiualer, & mourust (son heire esteant deins age) le Seignior auera & seisera le garde del heire, & issint nauera il my le gard del feoffor que fist le feoffment en fee, &c. issint il est graund diuersity enter les deux cases, &c.

OTherwise it is where the verie tenant is disseised, as in the case aforesaid, for if the very tenant who is disseised, hold of the Lord by Knights Seruice and dieth (his heire being within age) the Lord shall haue and seize the Wardship of the heire, and so shall he not haue the ward of the feoffor that made the feoffment in fee, &c. So there is a great diuersitie betweene these two cases.

Of this sufficient hath beene said before.

12.H.4.13. 36.E.3.tit gard. 10.6.H.7.9. 37.H.6.1. 32. H.6.27.7.E.6.tit. gard. Br.

Section 459.

¶ Item si vn hõe lessa a vn auter son terre pur terme dans, si le lessor release al lessee tout son droit, &c. deuant que le lessee auoit enter en mesme le terre per force d mesme l' leas, tiel releas est void, pur ceo que le lessee nauoit poss. en la terre al temps del releas fait, mes tantsolement vn droit dauer mesme la terre per force de mesme le leas. Mes si le lessee enter en mesme la terre, & ent eit poss. per force de mesme le leas, donque tiel releas fait a luy per le feoffor, ou per son heire, est sufficient a luy per cause del priuitie, que per force d̄ leas est perenter eux, &c.

ALso if a man letteth to another his land for tearme of yeares, if the lessor release to the lessee all his right, &c. before that the lessee had entred into the same land by force of the same lease, such release is void, for that the lessee had not possession in the land at the time of the release made, but only a right to haue the same land by force of the lease. But if the lessee enter into the land, and hath possessiõ of it by force of the said lease, then such release made to him by the feoffor, or by his heire is sufficient to him, by reason of the priuitie which by force of the lease is betweene them, &c.

¶ *Deuant que le lessee auoit enter, &c.* For before entry the Lessee hath but interesse termini, an interest of a terme and no possession, and therefore a release which enure by way of inlarging of an estate cannot worke without a possession, for before possession there is no reuersion, and yet if a tenant for twentie yeares in possession make a lease to B. for fiue yeares, and B. enter, a release to the first lesse is good, for he had an actuall possession, and the possession of his Lesse is his possession. And so it is if a man make a lease for yeares, the remaynder for yeares, and the first lessee doth enter, a release to him in the remaynder for yeares is good to inlarge his estate.

49.E.3.28. 32.H.6.8. 37.H.6.18. 22.E.4.37. 4.H.7.10. 15.H.7.14.

22.E.4. Surrender 6.

But if a man make a lease for yeares to begin presently, reseruing a rent, if before the lesse doth enter the lessor releaseth all the right that hee hath in the land, albeit this release cannot inlarge his estate, yet it shall in respect of the priuitie extinguish the rent. And so it is if a lease be made to begin at Michaelmas, reseruing a rent, and before the day the lessor release all the right that hee hath in the land, this cannot enure to

enlarge the estate but to extinguish the rent in respect of the priuitie, as it was resolued (b) in the Exchequer which I obserued.

A man granteth the next auoydance of an Aduowson to two, the one of them may before the Church become voide release to the other, for although the Grantor cannot release to them to encrease their estate, because their interest is future, and not in possession, yet one of them to extinguish his interest may release to the other in respect of the priuity. But after the Church become voide, then such a Release is voide, because then it is (as it were) but a thing in action. And this was resolued (c) by the whole Court of Common pleas, which I my selfe heard and obserued. And by consequent in the case of Littleton, if a Lease for yeares be made to two, albeit the Lessor before they enter cannot Release to them to enlarge their estate, yet one of them may before entrie Release to the other.

(b) Mich. 39. & 40. Eliz. in Scaccario, betweene Sir Henry Woodhouse and Sir William Paston.

(c) Trasch. 38. Eliz. in quare impedit per Bennet, vers. Ieuesque de Norwich in Communibanco.

¶ *Mes tant solement vn droit, &c.* Which is not so to bee vnderstood that hee hath but a naked right, for then he could not grant it ouer, but seeing hee hath Interesse termini before entrie, he may grant it ouer, albeit for want of an actuall possession he is not capable of a Release to enlarge his estate.

Pl. Com. 423.

¶ *Mes si le lessee enter en mesme le terre, &c.* This is euident. And herein note a diuersitie betweene a Lease for life, and for yeares, for before the Lesse for yeares enter, a Release cannot be made vnto him, but if a man make a Lease for life, the Remainder for life, and the first Lessee dieth, a Release to him in the remainder and to his heires is good before he doth enter to enlarge his estate, for that he hath an estate of a Freehold in Law in him, which may be enlarged by Release before entrie.

25. E. 3. 53. 31. E. 3. Confirmat. 14. 31. Ass. Pl. 13.

And where our Author speaketh only of a Lesse for yeares, the same law it is of a Tenant by Statute merchant or Staple, or Tenant by Elegit or the like.

Sect. 460. & 461.

21. H. 6. 37. 2. E. 4. 6. b. 7. E. 4. 27. 8. E. 4. 16. 29. H. 6. Release 6.

¶ By these two Sections is to bee obserued a diuersitie betweene a Tenant at will and a Tenant at sufferance, for a release to a Tenant at will is good, because betweene them there is a possession with a priuity, but a Release to a Tenant at sufferance is voyd because he hath a possession without priuity. As if Lesse for yeares hold ouer his terme, &c. a Release to him is voide for that there is no priuity betweene them, and so are the bookes that speake of this matter to be vnderstood.

¶ * *Sed contrariũ tenetur, &c.* This is of a new addition, and the booke here cited ill vnderstood, for it is to be vnderstood of a Tenant at sufferance.

¶ *De sa teste demesne occupia.* Hee doth not say, De sa teste

¶ **Et mesme le maner est, come il semble, ou lease est fait a vn home, a tener de l'lessor a sa volunt, per force de quel leas le lessee eit possession, si le lessor en cest case fait vn releas al lessee de tout son droit, &c. cest releas est assets bon pur le priuitie que est penter eux, car en vain serra ô faire estate per vn liuerie de seisin a vn auter, lou il ad possession de mesmes les tenements per le leas de mesme celuy deuant, &c.**

¶ * Sed contrariũ tenetur, P. 2. Ed. 4. **p touts les Justices.**

¶ IN the same manner it is as it seemeth, where a Lease is made to a man to hold of the Lessor at his will, by force of which Lease the Lessee hath possession, if the Lessor in this case make a release to the Lessee of all his right, &c. this release is good enough for the priuity which is betweene them, for it shall bee in vaine to make an estate by a liuery of seisin to another where he hath possession of the same land by the lease of the same mã before, &c.

But the contrarie is holden, *Pasch. 2. E. 4.* by all the Iustices.

Sect

Sect.461.

¶ Mes lou home de ſa teſte demeſn occupia terr̃s ou tenements a la volunt celuy que ad le franktenement, & tiel occupier ne claima riens forſq; a volunt, &c. ſi celuy que ad le franktenement voile releaſer tout ſon droit al occupier, &c, tiel Releaſe eſt voide, pur ceo que nul priuity ẽ perenter eux per leaſe fait al occupier, ne per auter maner, &c.

BVt where a man of his owne head occupieth lands or tenements at the will of him which hath the freehold, and ſuch occupier claimeth nothing but at will, &c. if hee which hath the freehold will releaſe all his right to the occupier, &c. this releaſe is voide, becauſe there is no priuity betweene them by the leaſe made to the occupier, nor by other manner, &c.

demeſn enſ, &c. ſo as this is to bee vnderſtood of a Tenant at ſufferance, viz. where a man commeth to the poſſeſſion firſt lawfully, and holdeth ouer.

Vid. Sect. 68.

(m) For if a man entreth into land of his owne wrong, and take the profits, his words to hold it at the will of the owner cannot qualifie his wrong, but hee is a Diſſeiſor, and then the Releaſe to him is good, or if the owner conſented thereunto, then hee is a Tenant at will, and that way alſo the Releaſe is good. But there is a diuerſity when one commeth to a particular eſtate in land by the act of the partie, and when by act in Law, for if the Gardein hold ouer, hee is an abator becauſe his intereſt came by act in Law.

(m) *Temps H.8. tit. Tenant a volunt. Br. 15. 2.E.4.38. 18.E.4.25. 39.E.3.28. 12.E.3. fol 8. 11.E.3. fol 87. 12.Aſſ 21 13.E.3. Aſſ.92. 28.Aſſ.11. 34.Aſſ.10. 10.E.3.41. 8.E.3.63.*

Vid. 2. part of the Inſtitutes Marlb. ca. 16. & 10.E.4.9.10.

¶ *Nul priuitye.* Priuitie, is a word common aſwell to the Engliſh, as to the French, and in the vnderſtanding of the Common Law is Fourefolde.

1 As Priuies in Eſtate, whereof Littleton here ſpeaketh, as betweene the Donor and Donee, Leſſor and Leſſee, which priuitie is euer immediate.

2 Priuies in Blood, as the heire to the anceſtor, or betweene Coparceners, &c.

3 Priuies in Repreſentation, as Executors, &c. to the Teſtator,

And fourthly, Priuities in Tenure, as the Lord and Tenant, &c. which may bee reduced to two generall heads, Priuies in Deed, and Priuies in Law.

Old N.B. 117.137. Lib.3.fo.23 Walkers caſe. Lib.4.fo.123.124. Vid. Sect.454.

Sect.462. & 463.

¶ Item ſi home enfeoffe auĩrs hões de ſa terre ſur confidence, et al entent de performer ſa darreiñ volunt, et le feoffor occupiaſt meſme la terre a le volũt de ſes feoffees, et puis les feoffees releſſont per lour fait a lour feoffor tout lour droit, &c. ceo ad eſte vn queſtion, ſi tiel releas ſoit bon ou non. Et aſcũs ont dit, q̃ tiel releas

ALſo if a man enfeoffe other men of his land vpon confidence, and to the intent to performe his laſt will, & the feoffor occupieth the ſame land at the will of his feoffees, and after the feoffees releaſe by their deed to their feoffor all their right, &c. this hath beene a queſtion if ſuch releaſe be good or no. And ſome haue ſaid, that

¶ HEre is a queſtion moued, and the reaſons of both ſides ſhewed, and as it hath beene obſerued, the latter opinion is the better, being Littletons owne opinion.

12.E.4.12.b. 15.E.4. 9.H.7.25. Vid. Sect. 302. 176. 340.

¶ *Il ſerra entendue per la ley que le feoffor doit maintenant occupie la terre a la volunt de les feoffees.* For intendments of Law mentioned by our Author, See the Sections in the margent.

4.E.4.8.b. 9.H.7.fo.vltimo. 15.H.7.2.b. 14.H.8.9.a.

Sect.99.100.110.367.377. 393.406.440.

Here is to bee obſerued the intendment of Law, that when a feoffment is made to a future vſe, as to the performance of his laſt will the feoffees ſhall bee ſeiſed to the vſe

35.H.6. Subpœna 22. 15.H.7.12.b. 37.H.6.36. 11.H.4.52. 7.H.4.22. 1.Mar.111. Dier.

vse of the Feoffor and of his heires in the meane time.

Ipsę etenim Leges cupiunt vt iure regantur.

And reason would that seeing the Feoffement is made without consideration, and the feoffor hath not disposed of the profits in the meane time, that by construction and intendment of Law the Feoffor ought to occupie the same in the meane time. And so it is when the Feoffor disposeth the profits for a particular time in præsenti, the vse of the Inheritance shall be to the Feoffor and his heires, as a thing not disposed of. wherein it is to be obserued, That Lands and Tenements conueyed vpon confidences, vses, and trusts, are to be ruled and decided, if question groweth vpon the confidences, vses, or trusts, by the Iudges of the Law: for that it appeareth by this and the next Section, they are within the Entendment and construction of the Lawes of the Realme.

And it is to be obserued (as hath beene sayd) that there is a diuersitie betweene a feoffement of lands at this day vpon confidence, or to the intent to performe his last will, and a Feoffment to the vse of such person and persons, and of such estate and estates, as he shall appoynt by his last will, for in the first case, the Land passeth by the Will, and not by the Feoffement, for after the Feoffement the Feoffor was seised in Fee simple as he was before, but in the latter Case the will pursuing his power

est voyd, pur ceo que nul priuitie fuit perenter les Feoffees et lour feoffor, entant que nul Lease fuit fait apres tiel feoffement per les feoffees al Feoffor, a tener a lour volunt. Et ascuns ont dit le contrarie, et ceo p̃ deux causes.

which was because there was no priuitie between the feoffees and their feoffor, in so much as no Lease was made after such feoffement by the feoffees to the feoffor, to hold at their will: and some haue said the contrarie, and that for two causes.

35.H.6.Subpœna, 22. 30.H.6.tit. Droits.

Sect. 463.

CVM est, Que quãt tiel feoffement est fait sur confidence a performer la volunt del feoffor il serra intendue per la Ley, que le Feoffor doit maintenant occupier la terre a la volunt de ses Feoffees, et issint il est tiel manner de priuitie enter eux, sicome hõe fait vn feoffement as auters, et ils incontinent sur le Feoffement, voylent & grãterõt que lour feoffor occupiera la Terre a lour volunt, &c.

ONe is, That when such Feoffement is made vpon confidence to performe the will of the Feoffor, it shall bee intended by the Law, that the feoffor ought presently to occupie the Land at the will of his Feoffees, and so there is the like kind of priuitie betweene them: As if a man make a Feoffement to others, & they immediately vpon the feoffement, will and grant, that their Feoffor shall occupie the Land at their wil, &c.

Lib.6.fo.17.18.Sir Edward Clere's case.

Dillon & Freyn's case, l.1. & 2. fol.113.

Note, vses are raised either by transmutation of the estate, as by Fine, Feoffment, Common recouerie, &c. or out of the state of the owner of the Land by bargaine and sale by Deed indented and inrolled, or by couenant vpon lawfull consideration, whereof you may read plentifully in my Reports.

A Feoffee to the vse of A. and his heires, before the Statute of 27.H.8. for money bargaineth and selleth the Land to C. and his heires, who hath no notice of the former vse, yet no vse passeth by this bargaine and sale, for there cannot be two vses in Esse, of one and the same Land, and seeing there is no transmutation of possession by the Terre-tenant, the former vse can neither be extinct nor altered. And if there could be two vses of one and the same Land, then could

not the ſayd Statute execute either of them for the vncertaintie. But if A. diſſeiſe one to the vſe of B. and A. doth bargaine and ſell the land for money to C. C. hath an vſe, and here be two vſes of one land, but of ſeuerall natures, the one, viz. vpon the bargaine and ſale to be executed by the Statute, and the other not.

But ſince Littleton wrote, all vſes are tranſferred by Act of Parliament, (c) into poſſeſſion, (c) 27.H.8.ca.10.
ſo as the caſe which Littleton here puts is thereby altogether altered. Yet it is neceſſarie to be knowne what the Common Law was before the making of the Statute, and may ſerue for the knowledge of the Law in like caſe.

¶ *Incontinent ſur le Feoffement.* Quæ incontinenti fiunt in eſſe vident'.

¶ *A leur volunt, &c.* Here is implyed euery tenancie at will is at the will of both parties, as before in his proper place hath beene ſhewed.

Sect. 464.

¶ VN autr cauſe ils allegeont, Que ſi tiel fre vault pl.ſ. per an. &c. donque tiel feoffor ſerra ime en aſſiſes et en auters enquests en plees realx, et auxy en plees perſonalls de quel graund ſum que les Plaintifes voilent counter, &c. Et ceo eſt per l'Common ley de la Terre, Ergo ceo eſt pur vn graund cauſe, et la cauſe eſt, que la Ley voet que tiels Feoffors et lour heyres doient occupier, &c. et prender et enioyer touts maner d' profits, iſſues, et reuenues, &c. ſicome les Tenements fuerõt lour meſmes ſans interruption de les feoffees, nient obſtant tiel feoffement, Ergo meſme la Ley done priuitie perentr tiels feoffors et

ANother cauſe they alledge, That if ſuch land bee worth fortie ſhillings a yere, &c. then ſuch Feoffor ſhall be ſworne in Aſſiſe and other enqueſts in Plees realls, and alſo in Plees perſonalls, of what great ſumme ſoeuer the Plaintife will declare, &c. And this is by the Common Law of the land, *Ergo* this is for a great cauſe, and the cauſe is, for that the Law will that ſuch Feoffors and their heyres ought to occupie, &c. and take and enioy all manner of profits, iſſues, and reuenues, &c. as if the Lands were their own without interruption of the Feoffees, notwithſtanding ſuch Feoffement. *Ergo* the ſame law giueth a priuitie betweene ſuch Feoffors and the Feoffees vpon confidence,

¶ BY the Statute of 2.H.5.cap.3.Statut.2. it is enacted, That in three caſes he that paſſeth in an Enquest ought to haue Lands and Tenements to the value of fortie ſhillings, viz. First, Vpon trial of the death of a man. Secondly, in Plea reall betweene partie and partie. And thirdly, In Plea perſonall, where the debt or the dammages in the Declaration amount vnto fortie Markes. And it is worth the noting, That the Iudges that were at the making of that Statute did conſtrue it by equitie: for where the ſtat. ſpeakes in the diſiunctiue debt or dammages, they adiudged that where the debt or dammages amounted to forty marks, that it was within the Statute. Forteſcue (f) ſaith, Vbi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ hinc non requiritur, quod Iuratores in Actionibus huiuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, iuxta diſcretionem Iuſticiariorum, &c. And for as much as at the time of the making of this Statute, the greater part of the Lands in England in thoſe troubleſome and dangerous times (when that vnhappie controuerſie betweene the Houſes of Yorke and Lãcaſter was begun) were in vſe. And the Statute was made to remedie a miſchiefe, that

28.H.8.Dy.fo.9. Vi.W.2.ca.38. Leſtat. de 21. E.1. de Iuratis ponendis in Aſſiſis, &c.

9.H.5.fo.5.

(f) Forteſ.ca.25.

that the Sherife vse to return simple men of small or no vnderstanding, and therefore the Statute prouided, That hee should returne sufficient men, and albeit in Law the Land was the Feoffees, yet for that they had it but vpon trust and Cestv que vse toke the whole profits, as our Author here saith, and in equitie and conscience the Land was his, therefore the Judges for aduancement and expedition of Justice, extended the Statute (against the Letter) to Cestv que vse, and not to the Feoffees.

15.H.7.13.b. 13.H.7.7.b. 5.E.4.7.a.

(n) But note if a man hath a Freehold pur terme dauter vie, or is seised in his wifes right, and is returned on a Jurie, yet if after he be returned, Cestv que vie, or his wife die, he may be challenged, and so it is if after the returne the lands be euicted.

(n) 3.H.6.39.Challeng.19. 21.H.6.39.

les feoffees sur confidence, &c. pur quex causes ils ont dit que tiels Releases faits per tiels feoffees sur confidēce a lour feoffor ou a les heirs, &c. iffint occupant la tt, serra assets bon, et cest le melior opinion come il semble, &c.

for which causes they haue sayd, That such releases made by such Feoffees vppon confidence to their Feoffor or to his heirs, &c. so occupying the Lands, shall bee good enough: and this is the better opinion, as it seemeth.

¶ Quære, car ceo semble nul Ley a cest iour.

Quære, for this seemeth no Law at this day.

¶ *Et ceo est per le Common Ley.* Here three things are to be obserued. First, That the surest construction of a Statute is by the rule and reason of the Common Law. Secondly, That vses were at the Common Law. Thirdly, That now seeing the Statute (g) of 27.H.8 cap.10. which hath beene enacted since Littleton wrote, hath transferred the possession to the vse, this case holdeth not at this day, but this latter opinion before that Statute was good Law, as Littleton here taketh it.

(g) 27.H.8.ca.10.

¶ *Mesme la Ley done priuitie, &c.* Hereof it followeth, That when the Law giues to any man any estate or possession, the Law giueth also a priuitie and other necessaries to the same: and Littleton concludeth it with an Illatiue, Ergo mesme la ley done priuitie, which is verie obseruable for a conclusion in other cases.

And the (Quære) here made in the end of this Section is not in the Originall, but added by some other, and therefore to be reiected.

Also since Littleton wrote the sayd Statute of 2.H.5. is altered: for where that Statute limited foure shillings, now a latter Statute hath raised it to foure pounds, and so it ought to be contained in the Venire facias.

27.El.ca.6.

Note, an Vse is a Trust or Confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in priuitie to the estate of the land, and to the person touching the Land, scz. that Cestv que vse shall take the profit, and that the Terre-Tenant shall make an estate according to his direction. So as Cestv que vse had neither Ius in re, nor Ius ad rem, but onely a confidence and trust, for which he had no remedie by the Common law, but for breach of trust his remedie was onely by Subpœna in Chancerie: and yet the Judges for the cause aforesayd made the sayd construction vpon the sayd Statute.

Pl.Com.352.b. in Dalamere case, & 349.b. Li.1 fo.121.122.127.140. in Chudleys case. Li.2 fo 58.78. Li.5.fo.64. Li.7.fo.13. & 34.

Now how Iurors shall be returned, both in Common Pleas, and also in Pleas of the Crowne, and in what manner euidence shall be giuen to them, and how they shall be kept, vntill they giue their verdict, you may read in Forteseue, and therefore need not to be here inserted.

Forteſc.ca.25,26,27.

Sect. 465.

¶ IT is a certaine rule that when a Release doth enure by way of enlarging of an estate, that there must bee priuitie of estate, as betweene Lessor and Lessee, Donor and Donee. For if A. make a Lease to B. for life, and the

Flet li.5.ca.34. 15.H.7.14. 22.E.4.4.

¶ Item Releases solonque le matter en fait, ascun foits ont lour effect per force denlarger lestate celuy, a que le

ALso Releases according to the matter in fact, sometimes haue their effect by force to enlarge the state of him to

le release est fait. Si come ieo lessa certain terre a vn home pur terme des ans, per force de que il est en poss. & puis ieo relessa a luy tout le droit que ieo aye en le terre sans pluis parolx mitter en le fait, & deliuer a luy le fait, donques il ad estate forsque pur terme de sa vie. Et la cause est, pur ceo que quant le reuersion ou le remainder est en vn home, le quel voile enlarger per son releas lestate le tenant, &c. il nauera pluis greinder estate, mes en tiel manner & forme, sicome tiel sessor fuit seisie en fee, & volloit per son fait faire estate a vn en certaine forme, & deliuer a luy seisin p force d mesme le fait: si en tiel fait de feoffement ne soit ascun parol d enheritance, donques il ad forsqz estate pur terme de vie, & issint il est en tiels releases faits per eux en la reuersion ou en le remainder. Car si ieo lessa la terre a vn home pur terme d sa vie, & puis ieo relessa a luy tout mon droit, saung plus dire & le releas,

whom the release is made. As if I let certaine Land to one for tearme of yeares, by force whereof hee is in possession, and after I release to him all the right which I haue in the land without putting more words in the Deed, and deliuer to him the Deed, then hath hee an estate but for tearme of his life. And the reason is for that when the reuersion or remaynder is in a man who will by his release inlarge the estate of the Tenant, &c. hee shall haue no greater estate, but in such manner & forme, as if such lessor were seised in fee, and by his Deed will make an estate to one in a certain forme, and deliuer to him seisin by force of the same Deed: if in such Deed of feoffement there be not any word of Inheritance, then he hath but an estate for life, and so it is in such Releases made by those in the reuersion or in the remainder. For if I let land to a man for tearme of his life, and after I release to him all my right without more saying in the release, his estate is not

Lessee maketh a Lease for yeares, and after A. releaseth to the Lessee for yeares, and his heires, this release is void to inlarge the estate, because there is no priuitie betweene A. and the Lessee for yeares.

If a man make a Lease for twentie yeares, and the Lessee make a Lease for ten yeares, if the first Lessor doth release to the second Lessee and his heires, this release is void for the cause aforesaid.

For the same cause, if the Donee in taile make a Lease for his owne life, and the Donor release to the Lessee and his heires, this release is void to inlarge the estate.

And as priuitie is necessarie in this case, so priuitie only is not sufficient. As if an Infant make a Lease for life, and the Lessee granteth ouer his estate with warranty, the Infant at full age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into warrantie, the demaundant releaseth to him and his heires; Here is priuitie in Law, and a tenancie in supposition of Law, and yet because hee in rei veritate hath no estate, it cannot enure to him by way of inlargement, for how can his estate bee inlarged, that hath not any.

If a Tenant by the curtesie grant ouer his estate, yet he is tenant as to an Action of waste, Attornement, &c. and yet a Release to him and his heires cannot enure to inlarge his estate that hath no estate at all.

But if a man make a lease for yeares, the remaynder for life, release by the Lessor to the Lessee for yeares, and to his heires, is good for that hee hath both a priuitie and an estate, and the release also to him in the remaynder for life and his heires is good also.

If I grant the reuersion of my Tenant for life, to another for life, now shall not I haue an Action of waste: but if I release to the Grantee for life and his heires, now hee hath the Fee simple, and shall punish

42.E.3.16.a per Perry & Finchden.
41.E.3.17.a.7.E.4.17.

punish the waste done after.

It is further to bee obserued, that to a release that enureth by way of inlargement of the estate, there is not only required priuitie, as hath beene said, and an estate also, but sufficient words in Law to raise or create a new estate. If a man make a Lease to A. for tearme of the life of B. and after release to A. all his right in the land by this, A. hath an estate for tearme of his owne life, for a lease for terme of his owne life is higher in iudgement of Law, then an estate for tearme of another mans life.

son estate nest my enlarge. Mes si ieo release a luy & a ses heires, donques il ad fee simple, et si ieo release a luy & a ses heires de son corps engendres, donques il ad fee taile, &c. Et issint il couient de specifier en le fait quel estate celuy a q̃ le releas est fait auera.

enlarged, but if I release to him and to his heires, then he hath a Fee simple, and if I release to him and to his heires of his bodie begotten, then he hath a fee taile, &c. And so it behoueth to specifie in the Deed what estate hee to whom the Release is made shall haue.

16.H.6.release 45.
22.E.2.release. Statham.

If a Feme-Couert be Tenant for life, a release to the husband and his heires is good, for there is both priuitie and an estate in the husband, whereupon the release may sufficiently enure by way of inlargement (a) for by the entermarriage he gaineth a freehold in his wifes right.

(a) 13.H.4.6.Stauf.prer.7.b. 18.E.4.5.22.Ass.12. 11.H.7.19. 10.H.6.11.

¶ *Tout le droit.* Vide Sect. 650.

¶ *Pur terme des ans.* **So it is if a release bee made to tenant by** Statute, Staple, or Merchant, or Tenant by Elegit, as hath beene said, and so likewise to Gardeine in Chiualrie which holdeth in for the value, by him in the reuersion of all his right in the land, by this a freehold passeth for the life of him to whom the release is made, for that is the greatest estate that can passe without apt words of Inheritance.

If a man make a lease for ten yeares, the remainder for twentie yeares, he in the remainder releaseth all his right to the Lessee, he shall haue an estate for thirtie yeares, for one Charte cannot drowne another, and yeares cannot be consumed in yeares.

¶ *Mes si ieo release a luy & a ses heires, &c.* **Here it is to be obser-** ued that when a release doth enure by way of enlargement of an estate no Inheritance either in Fee simple, or Fee taile, can passe without apt words of Inheritance.

9.Eliz. Dier.263. 10.Eliz. Bendoes. Litt.lib.3.fol.68. 69.70.b.130.b.

But there is a diuersitie betweene a release that enureth by way of enlargement of the estate and by way of mitter lestate, for when an estate passeth by way of mitter lestate, there sometime there need not any words of Inheritance. As if a ioynt estate be made to the husband and to his wife, and to a third person and to their heires, the third person releaseth all his right to the husband, this shall enure by way of mitter lestate, and not by way of enlargement of the estate, because the husband had a Fee simple, and needeth not to haue any words of Inheritance. So it is if the release had beene made to the wife.

See before in the Chapter of Fee Simple.

(b) 40.E.3.41.46.E.3. 19.H.6.33.H.6.5.10.E.4.3

(b) If there be three Joyntenants, and one release to one of the other all his right, this enureth by way of mitter lestate, & passeth the whole Fee simple without these words (heires.) But if there be two Joyntenants, and the one of them release all his right to the other, this doth not to all purposes enure by way of mitter lestate, for it maketh no degree, and he to whom the release is made shall for many purposes be adiudged in from the first feoffor, and this release shall vest, all in the other Joyntenant without these words (heires.)

10.E.4.3.b.37.H.8.tit alienation. Br.31.8.H.4.8. 40.Ass.5.9.Eliz. Dier 263.

But if there be two Coparceners, and the one release all his right to the other, this shall enure by way of mitter lestate and shall make a degree, and without these words (heires) shall passe the whole Fee simple. And it is to bee obserued, that to releases that enure by way of mitter lestate, there must be priuitie of estate at the time of the release.

If two Coparceners be of a rent, and the one of them take the Tertenant to husband, the other may Release to her, notwithstanding the rent be in suspence, and it shall enure by way of Mitter lestate, and she may Release also to the Tertenant, and that shall enure by way of extinguishment: but if she Release to her sister and to her husband, it is good to be sure how it shall enure.

Vid.Litt.fo.68.69.

Littleton hauing now spoken of Releases that enure by way of Enlargement of the estate, and of Releases that enure by way of Mitter lestate, proceedeth to Releases that enure by way of Mitter le droit. So as of that which hath beene and shall be said by our Authors of Releases, it appeareth that some dos enure by way of Enlargement of estate, some by way of Mitter lestate, some by way of Mitter le droit, by way of Entrie and Feoffment, and some by Extinguishment.

Sect.

Sect.466.

¶ Item aſcuns foits releaſes vera de mitter et veſter le droit celuy que fait le releaſe, a celuy a que le releſ eſt fait. Si come vn home eſt diſſeiſi, et il releſſa a ſon diſſeiſor tout le droit que il ad, en ceſt cas le diſſeiſor ad ſon droit, iſſint que lou ſon eſtate adeuant fuit toꝛcious, oꝛe per tiel releas il eſt fait loyal et droiturel.

ALſo ſometimes Releaſes ſhall enure de mitter and veſt the right of him which makes the Releaſe to him to whom the Releaſe is made. As if a man be diſſeiſed, and he releaſeth to his diſſeiſor all his right. In this caſe the diſſeiſor hath his right, ſo as where before his ſtate was wrongfull, now by this releaſe it is made lawfull and right.

¶ *Et il releſſa a ſon diſſeiſor, &c.* This releaſe ſo putteth the right of the Diſſeiſee to the Diſſeiſor, that it changeth the quality of the eſtate of the Diſſeiſor for where his eſtate was before wrongfull, it is by this Releaſe made lawfull. But how farre and to what reſpects his eſtate is changed ſhall be ſaid hereafter in this Chapter in his proper place.

Sect. 467.

¶ Mes hic nota, que quãt hom eſt ſeiſi en fee ſimple, daſcun terres ou tenements, et vn auter voile releaſer a luy tout le droit que il ad en meſmes les tents il ne beſoigne de parler de les heires celuy a q̃ le releas eſt fait, pur ceo que il auoit fee ſimple al temps de releas fait. Car ſi releas fuit fait a luy pur vn iour, ou pur vn heure, ceo ſerroit auxy fort a luy ẽ ley, ſicome il vſt releas a luy et a ſes heires. Car quant ſon droit fuit ale de luy a vn foits per ſon releas ſans aſcun condition

BVt here note, that when a man is ſeiſed in fee ſimple of any lands or tenements, and another will releaſe to him all the right which he hath in the ſame tenements, he needeth not to ſpeake of the heires of him to whom the releaſe is made, for that he hath a fee ſimple at the time of the releaſe made, for if the releaſe was made to him for a day or an houre, this ſhall bee as ſtrong to him in law, as if he had releaſed to him and his heires. For when his right was once gone from him by his releaſe without any con-

¶ *Il ne beſoigne a parler de les heires, &c.* And the reaſon of Littleton hereof is for that the Diſſeiſor hath a fee ſimple at the time of the Releaſe made And this appeareth by that which hath beene ſaid before, ſo as regularly he that hath a fee ſimple at the time of the Releaſe made of a right, &c. needeth not ſpeake of his heires.

¶ *Car ſi releaſe fuit fait a luy pur vn iour, &c.* For the diuerſity is betweene a Releaſe of part of the eſtate of a Right, and betweene a Releaſe of a Right in part of the Land. And therefore Littleton here ſaith, that a Releaſe of a Right for a day or an houre is of as good force, as if he had releaſed his right to him and his heires. But if a man be diſſeiſed of two acres hee may releaſe his right in one of them, and yet enter into the other.

Vid.6.E.3.17. 12.E.4.tit. Diſcont. F. 29.

¶ *Sans aſcun condition,*

tion,&c. Herein is implied two diuersities, first betweene the quantity of the estate in a Right, and the quality thereof, for albeit the Villeine cannot release part of the state as hath beene said, yet may he release his right vpon condition as here it appeareth by Littleton, (c) and it agreeth with our bookes.

&c. a celuy que ad fee simple, il est ale a touts iours.

dition, &c. to him that hath the fee simple, it is gone for euer.

(c) 4.E.2. Release 50. 43.Ass.12. 17.Ass.2. 31.Ass.13. 32.H.24.

Also here is another diuersitie betweene a right whereof Littleton putteth his case which is fauoured in Law, and a Condition created by the party which is odious in Law, for that it defeateth estates. And therefore if a Condition be released vpon Condition, the Release is good, and the Condition voide.

What things may be done vpon Condition is too large a matter to handle in this place, our Author hauing treated of Conditions before, only to giue a touch of some things omitted there, shall suffice. An expresse Manumission of a Villeine cannot be vpon condition, for once free in that case, and euer free, also an Attornment to a Grantee vpon condition, the Condition is voide because the Grant is once settled. But this is to bee vnderstood of a Condition subsequent, and not of a Condition precedent, for in both those cases the Condition precedent is good. But Letters patents of Denization made to an Alien may be either vpon Condition subsequent or precedent, and so may the King make a Charter of pardon to a man of his life vpon Condition as is aboue said.

Rot. Parliament. 17. H.6. num. 29. Ap. Gulliams case. 20.E.3.cap 2. 3.H.7.fol.6.

Sect. 468.

¶ Mes lou home ad vn reuersion en fee simple, ou vn remainder ẽ fee simple, al temps de releas fait, la il voyle releaser al tenant per terme dans, ou pur terme de vie, ou al tenant en le taile, il couient a determiner lestate que celuy a que le releas est fait auera per force de mesme le releas, pur ceo que tiel releas enurera pur enlarger lestate de celuy, a que le releas est fait.

BVt where a man hath a reuersion in fee simple, or a remainder in fee simple at the time of the release made, there if hee will release to the tenant for yeares, or for life, or to the tenant in taile, hee ought to determine the estate, which he to whom the release is made shal haue by force of the same release, for that such release shall enure to enlarge the estate of him to whom the release is made.

Of this sufficient hath beene said before.

Sect. 469.

¶ Mes auterment est lou home ad forsque droit a la terre, et nad riens en le reuersion ne en l'remainder en fait. Car si tiel home relessa tout son droit a vn que est tenn de le franktenement, tout son droit est ale, coment que nul mention soit fait de les heires celuy a que le releas est fait. Car si ieo lessa terres a vn home pur terme

BVt otherwise it is where a man hath but a right to the land, and hath nothing in the reuersion nor in the remainder in Deed. For if such a man release all his right to one which is tenant of the freehold, all his right is gone, albeit no mention be made of the heires of him to whom the release is made: for if I let lands to one for terme of his life, if I after release

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de ſa vie, ſi ieo puis releas a luy pur enlarger ſon eſtate, il couient q̃ ieo releſſa a luy et a ſes heires de ſon corps engender, ou a luy et a ſes heires, ou per tiels pols: Auer et teñ a luy et a ſes heirs de ſon corps engendres, ou a les heires males de ſon corps engendres, ou tiels ſemblables eſtates, ou autrement il nad pluis greinḋ eſtate q̃ il auoit adeuant.

to him to enlarge his eſtate, it behoueth that I releaſe to him and to his heires of his body engendred, or to him and his heires, or by theſe words, to haue and to hold to him and to his heires of his body engendred, or to the heires males of his body engendred, or ſuch like eſtates, or otherwiſe hee hath no greater eſtate then hee had before.

CA *Vn que eſt tenant de franktenement.* Here it appeareth that to a Releaſe of a right, made to any that hath an eſtate of freehold in Deed or in Law no priuitie at all is requiſite. As if a Diſſeiſor make a Leaſe for life, if the Diſſeiſee releaſe to the Leſſee, this is good, and directly within the rule of Littleton becauſe the Leſſee hath an eſtate of freehold, albeit there be no priuitie. And ſo it is if a Diſſeiſor make a Leaſe to A. and his heires during the life of B, and A. dieth, a Releaſe by the Diſſeiſee to his heire before he doth actually enter is good.

Section 470.

CMES ſi mon teñ a terme de vie, leſſa meſme la terre ouſter a vn auter pur terme de vie de ſon leſſee, le remainder a vn auter en fee, ore ſi ieo releſſa a celuy a que mon tenant leſſaſt pur terme de vie, ceo ſerra barre a touts iours, coment que nul mention ſoit fait ó ſes heires, pur ceo que al temps de releas fait ieo auoy nul reuerſion, mes tantſolement vn droit dauer la reuerſion, car p̃ tiel leas, et le remainder ouſter que mon tenant fiſt en ceo cas, mon reuerſion fuit diſcontinue, &c. & tiel releas vera a celuy ẽ le remainder, dauer aduantage de ceo auſibien come al tenant a terme de vie.

BVt if my tenant for life letteth the ſame land ouer to another for terme of the life of his Leſſee, the remainder to another in fee, now if I releaſe to him to whom my tenant made a Leaſe for terme of life, I ſhall bee barred for euer, albeit that no mention bee made of his heires, for that at the time of the releaſe made I had no reuerſion, but only a right to haue the reuerſion. For by ſuch a releaſe and the remainder ouer which my tenant made in this caſe my reuerſion was diſcontinued, &c. and this releaſe ſhall enure to him in the remainder to haue aduantage of it as well as to the tenant for terme of life.

CLittleton hauing before ſpoken of releaſes which enure by way of Enlargemẽt, by way of Mitter l'eſtate & by way of Mitter le droit, here ſpeaketh of a releaſe of a right which in ſome reſpects enureth by way of Extinguiſhment, as in this caſe which Littl: here putteth, the Releaſe to the Leſſee of the Leſſee doth not enure by way of Mitter le droit, for then ſhould he haue the whole right, but as it were by way of Extinguiſhment, in reſpect of him, that made the Releaſe, and that it ſhall enure to him in the remainder which is a quality of an inheritance

extinguished. But yet the right is not extinct in deed, as shall be sayd hereafter in this Chapter.

¶ *Mon reuersion fuit discontinue, &c.* Heere Discontinue is in a large sence taken for Diuested, though the entrie of the Lessor be not taken away, which is implied in this (&c.)

Section 471.

¶ *Sont come vn Tnt en Ley.* Which is certainly true in this case of Remainder, and so it is also in case of a Reuersion, as if a Disseisor make a Lease for life, and the Disseisee doth release all his right to the lessee, this Release shall enure to him in the reuersion, albeit they haue seuerall estates, as hath beene sayd, which is implied in this (&c.)

¶ Car a cel intent le Tenaunt a terme de vie et celuy en le remainder sont sicome vn Tenaunt en Ley, et sont sicõe vn Tenant fuit sole seisie en son demesne come de fee al temps de tiel release fait a luy, &c.

For to this intent the tenant for term of life, and he in the remainder, are as one Tenant in Law, and are as if one Tenaunt were sole seised in his Demesne as of Fee at the time of such Release made vnto him, &c.

But if a Disseisor make a Lease for life, the remainder in fee, albeit they to some purposes (as here is sayd) are as one Tenant in Law, yet if the Disseisee release the Actions to the Tenant for life, after the death of the Tenant for life, he in the remainder shall not take benefit of this release, for it extended onely to the Tenant for life, as it is holden (a) in Edward Althams case. And in like manner if the Disseisor make a Lease for life, and the Disseisee release all Actions to the Lesse, this inureth not to him in the reuersion, and so our Author is to be vnderstood of a Release of Rights, and not of a Release of Actions, to the tenant for life, as to or for the benefit of him in the remainder or reuersion.

(a) Li.8.fo.148. Edw. Altham case.

Section 472.

21.E.3.41.

¶ *Si home soit disseisie, &c.* This is to be vnderstood where tenant in Fee simple is disseised and release: for if Tenant for life be disseised by two, and he releaseth to one of them, this shall inure to them both, for he to whom the release is made, hath a longer estate than hee that releaseth, and therefore cannot enure to him alone, to hold out his companion, for then should the Release enure by way of entrie and grant of his estate, and consequently the Disseisor to whom the release is made should become Tenant for life, and the Reuersion reuested in the Lessor, (b) which strange transmutation and change of estates in this case the Law will not suffer. But if Lesse for yeres be ousted, and he in the reuer-

(b) Li.4.fo.121. Dyers.F.29

¶ Item si hõe soyt disseisie per dux, il release a vn d cux, il tiendra son compaignion hors de Terre, et per tiel release il auera le sole possession et estate en la Terre. Mes si vn Disseisour enfeoffa deux en fee, et l disseisee release a lun des feoffees, ceo vera a ambideux de les Feoffees, et la cause de diuersity entr ceux deux cases est assets pregnant. ¶ Pur ceo

Also if a man bee disseised by two, if hee release to one of them, hee shall hold his Companion out of the Land, and by such Release hee shall haue the sole possession and estate in the Land. But if a Disseisor infeoffe two in fee, and the Disseisee release to one of the feoffees, this shal inure to both the feoffees, & the cause of the diuersity between these two cases is pregnant e-

ceo que ils veignont eins per feoffment, et lauters per tort, &c. enough. For that they come in by feoffment, and the others by wrong, &c.

tion disseised, and the Lesse release to the Disseisor, the Disseisee may enter, for the terme for yeares is extinct and determined. But otherwise it is in case of a Lesse for life, for the Disseisor hath a Freehold whereupon the Release of Tenant for life may enure, but the Disseisor hath no terme for yeares whereupon the Release of the Lesse for yeares may enure.

And so it is if Lesse in Tayle be disseised by two, and releaseth to one of them, it shal enure to them both. But if the Kings Tenant for life be disseised by two, and he releaseth to one of them, he shall hold out his Companion, for the Disseisor gained but the estate for life. So if two Joyntenants make a lease for life, and after doe disseise the Tenant for life, and he release to one of them, he shal hold out his Companion, for the Disseisin was but of an estate for life.

If Tenant for life be disseised by two, and he in the reuersion and Tenant for life ioyne in a Release to one of the Disseisors, he shall hold his Companion out, and yet it cannot enure by way of entrie and feoffement. But if they seuerally release their seuerall rights, their seuerall Releases shall enure to both the Disseisors.

But here in Littletons case, where Tenant in Fee simple is disseised by two, and releaseth to one of them, this for many purposes enureth by way of entrie and feoffement, and therefore he to whom the Release is made shall hold out his companion, and be made sole Tenant of the fee simple. And this holdeth not onely in case of a Disseisin, but also in case of Intrusion and Abatement: but necessarily hee to whom the Release is made must bee in by wrong, and not by title.

If two men doe gaine an Aduowson by vsurpation, and the right Patron releaseth to one of them, he shall not hold out his Companion, but it shall enure to them both; for seeing their Clerks came in by admission and institution, which are iudiciall acts, they are not meerely in by wrong: for an vsurpation shal cause a Remitter, as it appeareth in F.N.B.31.m.

But if a Leale for life be made, the remainder for life, the remainder in fee, and he in remainder for life disseiseth the Tenant for life, and then Tenant for life dieth, the Disseisin is purged, and he in the remainder for life hath but an estate for life. And so note a diuersity where the particular estate for life is precedent, and when subsequent. 19.H.6.21.38.H.6.28.Cast de Occupant.

Where our Author putteth his case of one disseised, put the case that two Joyntenants in Fee be disseised by two, & one of the Disseisees release to one of the Disseisors al his right, he shal not hold out his companion, because the Release is but of the moitie, without any certaintie. If a man be disseised by two women, and one of them take husband, and the Disseisee release to the husband, this shall enure to the aduantage of both the Disseisors, because the husband was no wrong doer, but in a manner in by title.

¶ *Il auera le sole possession & estate.* **If two Disseisors be, and they** make a Lease for life, and the Disseisee release to one of them, this shall enure to them both, and to the benefit of the Lessee for life also: for he cannot by the Release haue the sole possession and estate, for part of the estate is in another.

And so it is (as it seemeth) if the Disseisors make a Lease for yeares, and the Disseisee release to one of them, this shall enure to them both, for by the Release he cannot haue the sole possession: And it appeareth by Littleton, That he must haue the sole possession, and hold his Companion. But the Morgagee vpon condition, hauing broken the Condition, is disseised by two, the Morgagee hauing title of entrie for the Condition broken, release to the one Disseisor, albeit they be in by wrong, yet the Release shall enure to them both for two causes: First, For that they are not wrong doers to the Morgagor, but to the Morgagee, and by Littletons case it appeareth, That wrong is done to him that made the Release. Secondly, That hee that make the Release hath but a title by force of a Condition, and Littletons case is of a right. Like Law of an entrie for Mortmaine, or a consent to rauishment, &c.

¶ *Mes si vn Disseisor infeoffa deux, &c.* **And the reason of this di-** uersitie is, For that the Feoffees are in by Title, and are presumed to haue a Warranty, which is much fauoured in Law, and the Disseisors are meerely in by wrong. And the equitie of the Law doth preserue in this case the benefit of the estranger to the Release, comming in by one ioynt Title. 21.N.6.41.

¶ *Pur ceo que ils veignont eins per Feoffement, & lauters per Tort.* This is of a new addition, and not in the Original, and therefore I passe it ouer.

Sect.

Section 473.

¶ Item si ieo sue disseisie, et mon disseisor est disseisie, si ieo releas a le disseisor de mon disseisor, ieo nauera a vnque ass. ne entra sur le disseisor, pur ceo que son disseisor ad mon droit per mon release, &c. Et issint il semble en tiel cas, si soyent xx. disseisors, chescun apres auter, et ieo relessa a se darreine disseisor, celuy disseisor barrera touts les auters de lour actions et lour titles. Et la cause est, come il semble, pur ceo que en mults cases, quant vn home ad loyal title dentre, coment que il nentra pas, il defeatera touts mean titles per son releas, &c. Mes ceo nest my ẽ chescun cas, come serr̃ dit apres.

ALso if I be disseised, and my disseisor is disseised, if I release to the disseisor of my disseisor, I shall not haue an assise nor enter vpon the disseisor, because his disseisor hath my right by my release, &c. And so it seemeth in this case if there be xx. disseised one after another, and I release to the last disseisor, this disseisor shall barre all the others of their actions and their titles. And the cause is, as it seemeth, for that in many cases when a man hath lawfull title of entrie, although he doth not enter, he shall defeat all meane titles by his release, &c. but this holds not in euery case, as shall be said hereafter.

¶ HEre it is to be obserued, that a Release by one whose entry is lawfull to him that is in by wrong, shall purge and take away all meane Estates and Titles. And where our Author first putteth his case of two estates by wrong, and after of twenty Disseisins, all Estates be wrong.

21.H.6 41.11.H.4.33. 9.H.7.25.2.E.4.16. 21.E.4.78. 12.Ass.22. Vide 3.H.6.38.

If A. disseise B. who enfeoffeth C. with warrantie, who enfeoffs D. with warrantie, and E. disseiseth D. to whom B. the first Disseisee releaseth, this doth defeate all the meane Estates and Warrranties, because the release of B. is made to a Disseisor, and his Entry is lawfull.

Section 474.

¶ *Item si mõ disseisor lessa, &c.* If the Disseisor make a Lease for life, and the Lessee maketh a feoffment in fee, and the Disseisee releaseth to the Feoffee, the Disseisor shall not enter vpon the Feoffee, for albeit the release to one ioynt feoffee of a Disseisor, as hath beene said, shal not exclude the other, yet a release to the Feoffee of a Tenant for life in this case shall take away the Entry of the Disseisor for the alienation which was made to his Disinheritance, hee hauing

¶ Item si mon disseisor lessa les tenements dont il moy disseisist a vn auter home pur terme de vie, et puis le tenant a terme de vie aliena en fee, et ieo relessa al alienee, &c. donque mon disseisor ne poit enter, Causa qua supra, coment que a vn

ALso if my Disseisor letteth the tenements whereof hee disseised mee to another for tearme of life, and after the Tenant for tearme of life alieneth in fee, and I release to the alienee, &c. then my Disseisor cannot enter, *Causa qua supra*, albeit that at one

foits

foits alienation fuit a son disenheritance, &c.

time the alienation was to his disinheritance, &c.

the Inheritance by disseisin, so as hee could haue no warrantie annexed to it, and tenant for life hath forfeited his estate. But if the entry of the Disseisee were not lawfull, it is otherwise. As if a man make a Lease for life, and the Lesse for life is disseised, and that Disseisor is disseised, and he in the reuersion releaseth to the second Disseisor, the first Disseisor shall enter vpon the second Disseisor, and his entry is lawfull, and if the Lesse for life re-enter, he shall leaue the reuersion in the first Disseisor, and the cause is, for that the entry of the Disseisor at the time of the release made was not lawfull. And the Booke of (m) 9.H.7.25. is to be intended of an Estate tayle mutatis mutandis.

(m) 9.H.7.25.

If in the case aforesaid, the Disseisor make a Lease for life, and the Lesse infeoffeth two, and the Disseisee releaseth to one of the Feoffees, this shall barre the Disseisor, as hath beene said, but yet he shall not hold out his companion for the cause aforesaid.

Sect. 475.

¶ Item si home soit disseisi, le fits ad fits deins age et mourust, et esteant le fits deins age, le disseisor mourust seisi, et la terre discendist a son heir, vn estrang abate, et puis le fits le disseisee quant il vient a son plein age, releassa tout son droit a labator en ceit case iheire le disseisor nauera assise de Mordancester enuers labator mes serra bar, pur ceo que labator ad le droit del fits le disseisee p son relas, et lentrie le fits fuit congeable, pur ceo que il fuit deins age al temps del discent, &c.

ALso if a man be disseised who hath a sonne within age and dieth, and the sonne being within age the Disseisor dieth seised, and the land discend to his heire, and a stranger abate, & after the sonne of the Disseisee when hee commeth to his full age releaseth all his right to the abator, in this case the heire of the Disseisor shall not haue an Assise of Mordancester against the abator, but shall bee barred because the abator hath the right of the sonne of the Disseisee by his release, and the entry of the sonne was congeable, for that hee was within age at the time of the Discent, &c.

¶ The reason of this case is for that the entrie of the heire is congeable, and the Abator is in the land by wrong.

¶ *Abate.* Is both an English and French word and signifieth in his proper sence to Diminish, or Take away, as here by his entrie he Diminisheth and Taketh away the Freehold in Law discended to the heire, and so it is said to Abate an account signifying Subtraction or withdrawing, &c. and to Abate the courage of a man. In another sence it signifieth to Prostrate, Beate downe or Ouerthrow, as to Abate Castles, Houses, and the like, and to Abate a writ, and hereof commeth a word of Arte, Abatamentum which is an Entry by Interposition. Now the difference inter Disseisinam, Abatamentum, Intrusionem, Deforciamentum, & Vsurpationem, & Purpresturam, is this.

Vet.N.B.115. Britton cap.51 Bracton lib.4. cap.2. F.N.B.203.f.W.1 cap.17.

A Disseisin is a wrongfull putting out of him that is actually seised of a Freehold. And Abatement is when a man died seised of an estate of Inheritance, and betweene the death and the entry of the heire, an estranger doth interpose himselfe, and abate.

Intrusion first properly (n) is when the Ancestor died seised of any estate of Inheritance expectant vpon an estate for life, and then tenant for life dieth, and betweene the death and the entry of the heire an estranger doth interpose himselfe and intrude.

(n) F.N.B.203. Plow lib.4 cap.30.

Secondly, (o) he that entreth vpon any of the Kings Demaines, and taketh the profits is said to Intrude vpon the Kings possession.

(o) Pl.Com.

(p) F.N.B.141.f.g.h.

Thirdly, (p) when the heire in ward entreth at his full age without satisfaction for his marriage, the writ saith, quod intrusit.

Deforciamentum comprehendeth not only theke aforenamed, but any man that holdeth land whereunto another man hath right, be it by discent or purchase, is said to be a Deforcer. Usurpation hath two significations in the Common Law, one when an estranger that no right hath presenteth to a Church, and his Clarke is admitted and instituted, hee is said to bee an usurper, and the wrongfull act that he hath done is called an Usurpation.

(q) Glanvil.lib.9.cap.11. Britton fol.28.29.

Secondly, when any subiect doth vse without lawfull warrant, Royall Franchises, he is said to usurpe vpõ the King those Frãchises. Purprestura or Pourprestura a Purpresture (q) Purprestura est, &c. generaliter quoties aliquid fit ad nocumentũ regij tenementu, vel regiæ viæ (vel aquarũ publicarum) vel ciuitatis, &c. And because it is properly when there is a house builded, or an Inclosure made of any part of the Kings Demesnes, or of an high way, or a common street or publike water, or such like publike things, it is derived of the French word Pourpris which signifieth an Inclosure, but specially applied, as is aforesaid, by the Common Law.

Sect. 476.

9.H.7.25.

THere the entry of the disseisee is congeable, and yet the release doth not auoid the condition because the feoffee is in by title, as hath beene said, and may haue a warrantie. And herein our Author expresseth a diuersitie betweene a Condition in Law, and a Condition in Deed, for in the case before when the Disseisee releaseth to the Feoffee of the Tenant for life, the Condition in law is taken away, but otherwise it is in this case of a Condition in Deed.

Lib.1.fol.147. Mayowes case.

But if the Feoffee vpon Condition make a feoffment in fee ouer without any Condition, & the Disseisee release to the second Feoffee, the condition is destroyed by the release before the Condition broken or after. For the state of the second feoffee was not vpon any expresse Condition, as Littleton here putteth his case, and he may haue aduantage of the release, because it is not against his owne proper acceptance as Littleton speaketh in the next Section.

MEs si home soit disseisi, & le disseisor fait feoffment sur condition, cestascauoir, de rendre a luy certaine rent, & pur default de payment vn reentre, &c. si le disseisie relessa al feoffee sur condition vncore ceo nemedra lestate le feoffee sur condition, car nient obstant tiel releas, vncore son estate est sur condition sicome il fuit deuant.

¶ Et cum hoc concordat opinio omnium Iusticiariorum, P.9.H.7.¶.

BVt if a man be disseised and the disseisor maketh a feoffement vpon condition, *viz.* to render to him a certaine rent, and for default of payment a re-entry, &c. if the disseisee release to the feoffee vpon condition, yet this shall not amend the estate of the feoffee vpon condition, for notwithstanding such release, yet his estate is vpon condition as it was before.

¶ And with this agreeth the opinion of all the Iustices, *Pasch.9.H.7.*

But if it be a wrongfull title, such a title is taken away by a release, as if A. disseise B. to the vse of C. B. release to A. this shall take away the agreement of C. to the Disseisin, because it should make him a wrong doer, as if the disseisor be disseised, the disseisee releaseth to the second Disseisee, this taketh away the right the first Disseisor had against the second, and a relation of an estate gained by wrong shall neuer defeat an estate subsequent gained by right, against a single opinion, not affirmed by any other in one of our Bookes.

34.H.8.12.per Port.

Section 477.

ET le Disseisor grant vn Rentcharge, &c. Here is implyed Commons or any

ENmesme le manner est, lou home soit diss. de certein terre, & le disseisor

IN the same manner it is where a man is disseised of certaine lands & the Disseisor,

for grant vn rent charge hors ď meſm̃ la terre, &c. coment que apres le diſſeiſee releſſa al diſſeiſor, &c. vncore l'rent charge demurt en ſa force. Et la cauſe en ceux deux cases eſt ceo, q̃ home nauera aduantage per tiel releas q̃ ſerra encounter ſon proper acceptance, et encounter ſon grant demeſne: & coment q̃ aſcuns ont dit que lou lentre ď home eſt congeable ſur vn tenant ſil releaſiſt a meſme le tenant, que ceo auaileroit a l'tenant, ſicome il vſt enter ſur le tenant, et puis luy enfeoffa, &c. ceo neſt pas voier en chelcun cas. Car en le primer cas de ceux deux auauntdits caſes, ſi le diſſeiſie vſt enter ſur l'feoffee ſur condition, et puis luy enfeffa, donques eſt le condition tout defeat et auoid. Et iſſint en le ſecond caſe, ſi le diſſeiſie entraſt et enfeoffa celuy que granta l'rent charg̃, donques eſt le rent charge anient et auoid, mes il neſt pas void per aſcun tiel releas ſans entry fait, &c.

grant a rent charge out of the ſame land, &c. albeit the Diſſeiſee doth afterwards releaſe to the Diſſeiſor, &c. yet the Rent-charge remaynes in force. And the reaſon in theſe two caſes is this, that a man ſhall not haue aduantage by ſuch releaſe, which ſhall bee againſt his proper acceptance, & againſt his own grant. And albeit ſome haue ſaid, that where the entry of a man is Congeable vpon a Tenant if hee releaſeth to the ſame Tenant, that this ſhall auaile the Tenant, as if he had entred vpon the Tenant and after enfeoffed him, &c. this is not true in euery caſe, for in the firſt caſe of theſe two caſes aforeſaid, if the Diſſeiſee had entred vpon the Feoffee vpon condition, and after enfeoffed him, then is the Condition wholly defeated and auoided. And ſo in the ſecond caſe if the diſſeiſee entreth and enfeoffeth him who granted the Rent-charge, then is the Rent-charge taken away and auoided, but it is not void by any ſuch releaſe without entrie made, &c.

other profit out of the lands. And the reaſon is becauſe he ſhal not auoid his owne grant by a releaſe, hee himſelfe hath acquired ſince the grant, but if the Diſſeiſor in that caſe be diſſeiſed, and the Diſſeiſee releaſe to the ſecond Diſſeiſor he ſhall auoid it, as by that which hath beene ſaid, Sect. 473. appeareth. So likewiſe if A. and B. bee ioynt Diſſeiſors, and B. grant a Rent-charge, and the Diſſeiſee releaſe to A. all his right, A. ſhal auoid the Rent-charge becauſe it was not granted by him, and ſo not within the reaſon of our Author.

If there bee two Femes ioynt Diſſeiſors and the one taketh husband, and the Diſſeiſee releaſe to the other, ſhee is ſole ſeiſed, and ſhall hold out the husband and wife.

If two Diſſeiſors be, and they infeoffe another, and take backe an eſtate for life or in fee, albeit they remaine Diſſeiſors to the Diſſeiſee as to haue an aſſiſe againſt them, yet if hee releaſe to one of them hee ſhall not hold out his companion, becauſe their ſtate in the land is by feoffment.

If there be two Diſſeiſors and they be diſſeiſed, and they releaſe to their Diſſeiſor, and after diſſeiſe him, and then the Diſſeiſee releaſe to one or both of them, yet the ſecond Diſſeiſor ſhall re-enter, for they ſhall not hold the land againſt their owne releaſe; for Littleton here ſaith, that they ſhall not auoid their owne grant, and by like reaſon they ſhall not auoid their owne releaſe, & ſic de ſimilibus.

¶ *Come ſil vſt enter ſur le tenant & luy enfeoffe.* Here is another kind of releaſe, viz. a releaſe which enureth by way of entry and feoffment, for if a Diſſeiſee releaſe to one of the Diſſeiſors to ſome purpoſe this ſhall enure by way of entry and feoffment, viz. as to hold out his companion. But as to a Rent-charge granted

ted by him it shall not enure by way of entrie and feoffment, for if the disseisee had entred and enfeoffed him, the Rent charge had beene auoyded. But it is a certaine rule that when the entrie of a man is congeable, and he releaseth to one that is in by title (as hereto the feoffe vpon condition is) it shall neuer enure by way of entrie and feoffment, either to auoide a condition with which he accepted the Land charged, or his owne grant, or to hold out his Companion.

And where it appeareth by our Author that acts done by the Disseisor shall not be auoyded by the Release of the Disseisee. It is to be noted that acts made to the Disseisor himselfe shall not be auoyded by the alteration of his estate by the release of the Disseisee, as if the Lord before the Release had confirmed the estate of the Disseisor to hold by lesser seruices, the Disseisor shall take aduantage of it, and so of Estouers to be burnt in the house, and the like law of a warrantie made vnto him.

If the heire of the Disseisor indow his wife Ex assensu patris, and the Disseisee release to the Disseisor, he shall not auoide the indowment, for that is like the case put by Littleton of the Rent-charge.

If an Alien be a Disseisor and obtaine Letters of Denization, and then the Disseisee Release vnto him, the King shall not haue the land, for the Release hath altered the estate, and it is as it were a new purchase, otherwise it is if the Alien had beene the Feoffee of a Disseisor.

If the Lord disseise the Tenant, and is disseised, the Disseisee release to the second Disseisor, yet the Seigniory is not reuiued, for betweene the parties the Release enures by way of Entrie and Feoffment as to the land, but not hauing regard to the Seigniory, and for that the possession was neuer actually remoued or reuested from the Disseisor who claymeth vnder the Lord, the Seigniory is not reuiued. But if the Lord and a stranger disseise the Tenant, and the Disseisee release to the stranger, there the Seigniory by operation of Law is reuiued, for the whole is vested in the stranger which neuer claymed vnder the Lord. And in that case, if the Lord had died, and the land had survived, the Seigniory had beene reuiued. But if the Lord had disseised the Tenant, and beene disseised by two, and the Disseisee releaseth to one of them, the Seigniory is not reuiued, because he claymed (as hath beene said) vnder the Lord.

Sect. 478.

Vid. Sect. 514.

28.E.3.98. 9.E.4.46. 21.E.4.55. 41.E.3.10. 2.H.4.12.

¶ *Quel briefe de eux il esliera, &c.* Note many times in one case the Law doth giue a man seuerall remedies, and of seuerall kindes, as in this case by action and by entrie, by action, either a writ of right, or Dum fuit infra ætatem.

¶ *Et puis le Disseisor porta breife de droit, &c.* Here it appeareth that there is a great art and knowledge for a man that hath diuers remedies to chuse his aptest remedie, as in this case, if he bring his writ of right, the Disseisor shall be barred, but if he had entred vpon the heire of the Alienee, he should haue enioyed the land for euer. For in that case the heire of the Alienee after such an entrie shall neuer haue a writ of right no more then if the Disseisee entreth vpon the heire of the Disseisor, and make a Feoffment in fee, if the heire of the Disseisee

¶ Item si hom̃ soit disseisi pur vn enfant, le quel aliena en fee, & alienee deuie seisie, et son heire enter, esteant le Disseisor deins age, ore est en election le Disseisour, d auer vn briefe de Dum fuit infra ætatem, ou briefe d droit enuers le heire del alienee, et quel briefe de eux q̃ il esliera, il doit recouer per la ley, &c. Et auxi il poit enter en la terre sans ascun recouerie, et en cest case lentre l' Disseisie est tolk, &c. Mes en cest cas si le disseisee releassa son droit al heire

ALso if a man bee disseised by an infant, who alien in fee, and the Alienee dieth seised, & his heire entreth, the disseisor being within age, now is it in the election of the disseisor to haue a writ of *Dum fuit infra ætatem*, or a Writ of right against the heire of the alienee, and which writ of them hee shall choose, hee ought to recouer by the law, &c. And also he may enter into the land without any recouery, & in this case the entrie of the disseisee is taken away,

heire del alienee, et puis l' diſſeiſor porta bre d dñt enuers lheir dalienee, et il ioyne le miſe ſur l' mere droit &c. le graunde aſſiſe doit trouer per la ley que l' tenant ad pluis mere droit que ad le diſſeiſour, &c. pur ceo que le tenant ad le droit le diſſeiſie per ſon releas, le quel eſt pluis anciēt et pluis mere droit. Car p tiel leas tout le droit le diſſeiſee paſſa a le tenant, et eſt en le tenant. Et a ceo que aſcuns ont dit, que en tiel caſe lou hom̄ que ad droit al terres ou tenements (mes ſon entrie neſt pas congeable) ſil releſſa al tenant tout ſon droit &c. que tiel releas vera per voy dextinguiſhment: Quant a ceo il puit eſtre dit, q̄ ceo eſt voyer quant a celuy que releſſa, car p ſon releas il ad luy demiſe quietmēt de ſon droit, quant a ſon perſon, mes vncore le droit que il auoit bien poit paſſer a le tenant per ſon releaſe: Car enconuenient ſerroit que tiel ancient droit ſerroit extinct tout ouſterment, &c. Car il eſt cōmunement dit que

&c. But in this caſe if the diſſeiſee releas his right to the heire of the alienee, and after the diſſeiſor bringeth a writ of right againſt the heire of the alienee, and hee ioyne the miſe vpon the meere right, &c. the great aſſiſe ought to finde by the law that the tenant hath more meere right then the diſſeiſor, &c. for that the tenant hath the right of the diſſeiſee by his releaſe, the which is the moſt ancient & moſt meere right: for by ſuch releaſe all the right of the diſſeiſee paſſeth to the tenant, and is in the tenant. And to this ſome haue ſaid that in this caſe where a man which hath right to lands or tenements (but his entrie is not congeable) if hee releaſe to the tenant all his right, &c. that ſuch releaſe ſhall enure by way of extinguiſhment. As to this it may bee ſaid that this is true, as to him which releaſeth, for by his releaſe he hath diſmiſſed himſelfe quite of his right as to his perſon, but yet the right which he hath may well paſſe to the tenant by his releaſe. For it ſhould bee inconuenient that ſuch an ancient right ſhould bee extinct altogether,

reenter he ſhall detaine the land for ever, and the Feoffee ſhall not maintaine any writ of right, for a bare right ſhall neuer be left in the Feoffee, but ſhall euer follow the poſſeſſion, as hath beene ſaid, but if the Diſſeiſee entreth vpon the heire of the Diſſeiſor, and make a Feoffment in fee vpon condition, and entreth for the condition broken before the heire of the Diſſeiſor enter, hee is reſtored to his right againe. 38.E.3.16. 24 H.8. Reſons alprimer action. 5. Vid.Sect.447.

A man maketh a gift in tayle, the remainder in fee, Tenant in tayle dieth without iſſue, an eſtranger intrude, and he in the remainder bringe a Formedon, and recouereth by default, and maketh a Feoffment in fee, the Intruder reuers the recouery in a writ of diſceit and entreth he ſhall detaine the land for euer, and the Feoffee ſhall not haue a writ of right. 9.H.7.24.

And ſo likewiſe if a Diſſeiſor die ſeiſed, and a ſtranger abate and the Diſſeiſee releaſe to him, the heire of the Diſſeiſor ſhall enter and detaine the land for euer. For the right to the poſſeſſion ſhall draw the right of the land to it, and ſhall not leaue a right in him to whom the releaſe is made, as hath beene ſaid before in the 447. Section. 9.H.7.24.

¶ *Le droit del diſſeiſee paſſa al tenant, & eſt en le tenant.* For ſeeing the Tenant hath the whole fee ſimple, he is capable of the whole right of the diſſeiſee, and as Littleton here ſaith, the right is in the Tenant.

¶ *Inconuenient ſerroit.* Here againe as hath beene often obſerued, an argument Ab inconuenienti is forcible in Law, and that Iudges by the authority of our Author are to iudge of inconueniences as of things vnlawfull, Vid Sect.87.138.139.231. 269.440.721.

full, as hereby and by many other places it appeareth.

¶ *Vn droit ne poit pas morier.* Dormit aliquando ius, moritur nunquam. For of such an high estimation is right in the eye of the Law, as the Law preserueth it from death and destruction: troden downe it may be, but neuer troden out. For where it hath beene said that a release of a right doth in some cases enure by way of extinguishment. It is so to be vnderstood either (as Littleton doth here) in respect of him that makes the release, or in respect that by construction of Law it enureth not alone to him to whom it is made, but to others also who be estrangers to the release, which as hath beene said is a quality of an inheritance extinguished.

droit ne poit pas morier. &c. for it is commonly said, that a right cannot die.

14.H.8.6.b. As if there be Lord and Tenant, and the Tenant maketh a Lease for life the remainder in fee, if the Lord release to the Tenant for life, the rent is wholly extinguished, and he in the remainder shall take benefit thereof, euen so when the heire of a Disseisor is disseised, and the Disseisor make a Lease for life, the remainder in fee, if the first Disseisee release to the Tenant for life, this is said to enure by way of extinguishment, for that it shall enure to him in the remainder, who is a stranger to the Release, and yet in truth the right is not extinct but doth follow the possession, viz the Tenant for life hath it during his time, and he in the remainder to him and to his heires, and the right of the inheritance is in him in the remainder, for a right to land cannot die or be extinct in Deed, and therefore if after the death of Tenant for life the heire of the Disseisor bring a Writ of right against him in the remainder and he ioyne the mise vpon the mere right, it shall be found for him, because in iudgement of Law he hath by the said Release the right of the first Disseisee.

Sect.479. & 480.

14.H.8.fol.5.6.
21.H.7.25. 30.H.6.
vid.here.39. 38.E.3.10.

HEre Littleton putteth a diuersitie betweene Releases which enure by way of extinguishment, against all persons and whereof all persons may take aduantage, and Releases which in respect of some persons enure by way of extinguishment, and of other persons by way of Mitter le droit. Or betweene, Releases which in Deed enure by extinguishment for that hee to whom the Release is made cannot haue the thing released, and Releases which hauing some quality of such Releases are said to enure by way of extinguishment, but in troth doe not, for that he to whom the Release is made may receiue and take the thing released. And here Littleton putteth cases where Releases doe absolutely enure by extinguishment without exception hauing respect to all persons, and first of the Lord and Tenant. Secondly of the Rent charge. Thirdly, of the Common of pasture.

First of the Lord and Tenant, and the Lord release to

¶ **Mes releases q̄ enurera per voy dextinguishmēt enuers touts persons, sont lou celuy a que le releas est fait, ne poit auer ceo que a luy est releas. Sicome si soyent Sñr & tenant, et le Sñr relessa al tenant tout le droit que il ad en la seigniory, ou tout le droit que il ad en le terre, &c. tiel releas ba per voy de extinguishment enuers touts persons, pur ceo que le tenant ne poit auer seruice pur prender de luy mesme.**

BVt releases which enure by way of extinguishment against all persons, are where hee to whom the release is made cannot haue that which to him is released. As if there bee Lord and tenant, and the Lord release to the tenant all the right which hee hath in the seigniory, or all the right which hee hath in the land, &c. this release goeth by way of extinguishment against all persons, because that the tenant cannot haue seruice to receiue of himselfe.

Sect.480.

En

¶ En meſne ma-ner eſt de releas fait al Tenant del terre de vn rent charge ou common de paſture, &c. pur ceo que le tenant ne poit auer ceo que a luy eſt releſſe, &c. iſſint tiels releaſes vyera per extinguiſhment en touts voyes.

IN the ſame manner is it of a Releaſe made to the tenant of the land of a Rent-charge or Common of paſture, &c. becauſe the tenant cannot haue that which to him is releaſed, &c. ſo ſuch releaſes ſhall enure by way of extinguiſhment in all wayes.

The reaſon of this diuerſitie is, becauſe when the Releaſe is made generally, it can enure to the Leſſee but for life, becauſe it enureth by way of enlargement of eſtate, and being made to the Tenant of the Land, it enureth by way of extinguiſhment, as Littleton here ſaith, and then there cannot remain a particular eſtate in the Seigniorie for life. But when the Releaſe is made to them and their heires, each one takes a moitie, the one by way of encreaſing of the eſtate, and the other by extinguiſhment.

the Tenant his Seigniory, this muſt of neceſſitie enure by way of extinguiſhment to all men, for the Tenant cannot haue ſeruice to bee taken of himſelfe, nor one man can bee both Lord and Tenant. The ſecond is of a Rent-charge, a man cannot haue land and a rent iſſuing out of the ſame land. Thirdly, a man cannot haue land and a Common of paſture iſſuing out of the ſame land, Et ſic de cæteris. For in all theſe caſes and the like he to whom the Releaſe is made cannot haue and enioy the thing that is releaſed. But in the caſe of the right of land, the Tenant of the land may take and enioy it by ſtrengthening his eſtate therein

The meſne being a Feme entermarris with the Tenant perauaile, if the Lord releaſe to the Feme, the Seigniory only is extinct. but if hee Releaſe to the huſband, both Seigniory and meſnaltie are extinct. And in this caſe, if the Lord releaſe to the huſband and wife, it is a queſtion how the releaſe ſhal enure, but it is no queſtion but that a Releaſe may be made to a Meſnaltie or a Seigniory ſuſpended in part of the eſtate.

(r) 13.E.3.tit.Extinguiſhment, Brook 45. et tit. Vſuber F.120. 30.E.3.13. 19.H.6 19. 21.E.3.33. 38.Aſſ.17.

But here obſerue a diuerſity where a Releaſe enureth by way of extinguiſhment of an inheritance which is in poſſeſſion and may be granted ouer, and a Releaſe of a right, or an action to lands which cannot be granted ouer. (r) For the Lord may releaſe his Seigniorie to the Tenant of the land for life or in taile, Et ſic de cæteris. But ſo cannot one releaſe a right or an action, for if it be releaſed but for an houre, it is extinct forever, as hath beene ſaid.

11 H 4.tit.Releaſe, 21. 18.E.2 ibid. 5. 26.H.8. 5. 41. Aſſ.6.

And two things are to be obſerued here, firſt that by the Releaſe of all the right in the land the Seigniorie is extinct, as well as by the Releaſe of all the right in the Seigniorie, for the Seigniorie iſſueth out of the land. Secondly, That by the releaſe of all his right in the ſeigniorie or the land, the whole Seigniorie is extinct without any words of Inheritance. If the Tenancie be giuen to a Lord and to a ſtranger, and to the heirs of the ſtranger, the Lord releaſe to his Companion all the right in the land, this Releaſe doth not onely paſſe his eſtate in the Tenancie, but extinguiſheth alſo his right in the Seigniorie, and ſo one Releaſe enures to extinguiſh ſeuerall rights in one and the ſame land.

If there be Lord and Tenant by Fealtie and Rent, the Lord granteth the Seigniorie for yeares, and the Tenant atturneth, the Lord releaſeth his Seigniorie to the Tenant for yeres, and to the Tenant of the land generally, the whole Seigniorie is extinct, and the ſtate of the Leſſe alſo. But if the Releaſe had beene to them and their heyres, then the Leſſee had had the Inheritance of the one moitie, and the other moitie had beene extinct. And the reaſon of this diuerſitie is, becauſe when the Releaſe is made generally, it can enure to the Leſſee but for life, becauſe it enureth by way of enlargement of eſtate, and being made to the Tenant of the Land, it enureth by way of extinguiſhment, as Littleton here ſaith, and then there cannot remain a particular eſtate in the Seigniorie for life. But when the Releaſe is made to them and their heires, each one takes a moitie, the one by way of encreaſing of the eſtate, and the other by extinguiſhment.

Sect. 481.

¶ Item de prouer que le graund Aſſiſe doit paſſer pur le demandant en le caſe auauntdit, ieo aye oye ſouent la Lecture de Leſtatute

ALſo to proue that the graund Aſſiſe ought to paſſe for the demandant, in the caſe aforeſaid I haue often heard the reading of the Statute of Weſt.2.

¶ *Eo aye oye ſouent la Lecture de Weſt.2.* Here it is to be obſerued, of what authoritie antient Lectures or Readings vpon Statutes were, for that they had fiue excellent qualities: Firſt, They declared what the Common Law

Law was before the making of the Statute, as heere it appeareth. Secondly, They opened the true ſence and meaning of the Statute. Thirdly, Their caſes were briefe, hauing at the moſt one poynt at the Common Law, and another vpon the Statute. Fourthly, Plaine and Perſpicuous, for then the honour of the Reader was to excell others in authorities, argumẽts, & reaſõs for proof of his opinion, and for confutation of the obiections againſt it. Fifthly, They read, to ſuppreſſe ſubtill inuentions to creepe out of the Statute. But now Readings hauing loſt the ſaid former qualities, haue loſt alſo their former authorities: for now the caſes are long, obſcure, and intricate, full of new conceits, liker rather to Riddles than Lectures, which when they are opened they vaniſh away like ſmoake, and the Readers are like to Lapwings, who ſeeme to be neereſt their neſts when they are fartheſt from them, and all their ſtudis is to find nice euaſions out of the Statute. By the authorities of Littleton antient Readings may be cited for proofe of the Law, but new Readings haue not that honour, for that they are ſo obſcure and darke.

de Weſtminſter ſecond, que commence, In caſu quo vir amiſerit per defaltam tenementum quod fuit ius vxoris ſuæ, &c. que a le Common Ley deuant meſm Leſtatut, ſi Leaſe ſoit fait a vn home pur terme de vie, le remainder ouſter en fee, et vn eſtrange per feint Action vſt recouer enuers le tenant a ſme de vie per default, et puis le Tenant moruſt, celuy en le remainder nauoit aſcũ remedie deuaunt le Statute, pur ceo que il nauoit aſcun poſſeſſion del terre. which begunne thus: *In caſu quo vir amiſerit per defaltam Tenementũ quod fuit ius vxoris ſuæ, &c.* that at the Common Law before the ſayd Statute, if a leaſe were made to a man for terme of life, the remainder ouer in fee, and a Stranger by feigned Action recouered againſt the Tenant for life by default, and after the Tenant dieth, he in the remainder had no remedie before the Statute, becauſe hee had not any poſſeſſion of the Land.

¶ *Leſtatute de W.2.* which is the third Chapter.

(a) 24.E.3.35. 28.E.3.96. 18.E.2. Entrie 74. 3.E.2. Entrie 7. 6.E.3.24. 7.E.3.Ent.52 7.E.3.54.55 15.E.4.15. F.N.B.217.d. Regiſter 241.

¶ *Le remainder ouſter en fee.* Here is to be obſerued, That although the Statute ſpeaketh of a Reuerſion, (a) yet by the authorities of Littleton a remainder is within the Statute.

See the Statute of 14.Eliz.ca.8. which prouideth fully for him in the remainder.

¶ *Feint Action.* Feint is a Participle of the French word Feindre, which is to feigne or falſly pretend, ſo as a faint Action is a falſe Action.

(b) W.2.cap.5.

Vide 34.E.3.Fawndon 31. 11.E.3.ibid.31. 8.E.3.59. F.N.B.217.d.7.H.7.13.

¶ *Nauoit aſcun remedie deuant Leſtatute.* (b) Here it appeareth by Littleton, That if a man maketh a Leaſe for life, the remainder in fee, and Tenant for life faileth a Recouerie by default, that he in the remainder ſhould not haue a Formedon by the common Law: for Littleton ſaith, That he had not any remedie before the Statute. Neither is there any ſuch writ in that caſe in the Regiſter, albeit in ſome Bookes mention is made of ſuch a writ.

Sect. 482.

38.E.3.3. Tit.Iuris vtrum 1.

¶ HEere a Diſſeiſin gotten by wrong, and defeated by the entrie of him that right hath, is ſufficient to maintaine a writ of Right againſt the recouerer in this caſe, for albeit

¶ MEes ſi celuy en le remainder vſt enter ſur le tenant a ſme de vie, et luy diſſeiſiſt, & apres le

BVt if he in the remainder had entred vpon the Tenant for life, and diſſeiſed him, and after the Te-

le Tenaunt entra ſur luy, et apꝛs le tenant a terme de vie, per tiel recouery perde per default & mozuſt, oze celuy en l' remainder vien poit auer vziefe de Dꝛoit enſus celuy que recouera, pur ceo que le miſe ſerra ioiñ ſolement ſur le meere dꝛoit, &c. Uncoze en ceſt caſe, le ſeiſin de celuy en le remainder fuit defeat per entrie del tenant a terme de vie. Mes peraduenture aſcuns voilent argue et dire, que il nauera vziek ð Dꝛoit en ceſt caſe, pur ceo q̃ quant le miſe ẽ ioine, il eſt ioiñ en tiel mañ, ſ̃, ſi le tenant ad plus mere dꝛoit en le terre en le manner come il tyent, q̃ le demandãt ad en le maner come il demanda, et pur ceo que le ſeiſin del dõt fuit defeat per lentry de le tenant a terme de vie, &c. donque il ad mul dꝛoit en l' mañ come il demaund.

nant enter vpon him, and after the Tenaunt for life by ſuch recouerie loſe by default and die, now hee in the remainder may well haue a Writ of Right againſt him wch recouers, becauſe the Miſe ſhalbe ioined only vpon the mere right, &c. Yet in this caſe the Seiſin of him in the Remainder was defeated by the entrie of the tenant for life. But peraduenture ſome wil argue and ſay, That hee ſhall not haue a Writ of Right in this caſe, for that when the Miſe is ioyned, it is ioyned in this manner, (*ſcilicet*) if the Tenaunt hath more mere right in the land in the manner as he holdeth, than the demandant hath in the manner as hee demãdeth, & for that the ſeiſin of the demãdant was defeated by the entrie of the tenant for term of life, &c. thẽ he hath no right in the maner as he demandeth.

the Seiſin is defeated betweene the Leſſee for life, and him in the remainder, yet hauing regard to the Recouerer, who is a meere ſtranger and hath no title, it is ſufficient againſt him. But otherwiſe it is againſt the partie himſelfe that defeated the Seiſin, and the Law is propenſe to giue remedie to him that right hath. And where ſome haue thought, that there is no authoritie in Law to warrant Littletons opinion herein, they are greatly miſtaken, for Lit. hath good warrant for all that he hath written.

7.E.3.62. 38.E.3.37. Tit. Iur.vir.1.

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heires of A. A dieth, B. entreth and dieth, a ſtranger intrudeth, the heire of A. ſhall haue a Writ of Right of the Seiſin which A. had as Tenaunt for life.

Lands are letten to A. and B. and to the heires of A. A. dieth, a recouerie is had againſt B. the heire of A. ſhall haue a Writ of Right of the whole, for euery Ioyntenant is ſeiſed per my & per tout.

If lands be giuen in tayle, the remainder to A. in Fee, the Donee dieth without Iſſue, his wife priuemẽt enſeint, A. entreth, the Iſſue is borne and entreth vpon him and dieth without Iſſue, A. ſhall haue a Writ of Right, of the Seiſin which he had.

If Lands be giuen in taile to A. the remainder to his right heires, A. dieth without Iſſue, the collaterall heire of A. ſhall haue a Writ of Right of the ſeiſin of A.

4.E.3.16.17.

And ſo note a diuerſitie betweene a Seiſin to cauſe poſſeſſio fratris, &c. for there is required a more actuall ſeiſin,

40.E.3.8.42.E.3.20.37.As.4 24.E.4.24.7.H.5.4.11.H.4 11.

and a Seiſin to maintaine a Writ of Right. And hereby alſo are the (&c.) in this Section explained.

Sect. 483.

CAr ceo poit eſtre dit, que ceux parols (modo & forma put &c.) in mults ꝺs caſes ſõt parols

TO this it may be ſaid, that theſe words (*modo & forma prout, &c.*) in many caſes are words

parols de forme de pleder, & ne-ny parols de substance. Car si home port briefe dentre In casu proviso, del alienation fait per le tenant en dower a son disinheritance, et counta del alienation fait en fee, et le tenant dit, que il ne aliena pas en le manner come le demaundant ad declare, et sur ceo sount a issue, et troue est per verdict, que le tenant alyenast en le taile, ou pur terme dauter vie, le demaundant recouera: uncore alyenation ne fuit en le manner come le demaundant auoit declare, &c.

of forme of pleading, and not words of substance, for if a man bring a Writ of Entrie *in casu provisa*, of the alienation made by tenant in Dower to his disinheritance, and counteth of the alienation made in fee, and the tenant saith, that he did not alien in manner as the Demandant hath declared, and vpon this they are at issue, and is found by verdict, that the Tenant alienated in taile, or for terme of another mans life, the Demandant shall recouer, yet the alienation was not in manner as the Demandant hath declared, &c.

(e) 9.H.6.3. 49.E.3.31. 21.E.4.22. F.N.B.206.g. 40.E.3.5. 32.H.8.Issue Br. 80. *Vide Sect. sequent.*

¶ Where Modo & Forma are of the substance of the issue, and where but words of forme, this diuersitie is to be obserued, (e) where the issue taken goeth to the point of the writ or Action, there Modo & forma, are but words of forme, as here in the Case of the writ of Entrie in casu proviso, and so is the (&c.) well explained in this Section. But otherwise it is, when a collaterall point in pleading is trauersed, as if a feoffment be alleadged by two, and this is trauersed Modo & Forma, and it is found the feoffment of one, there Modo & Forma is materiall. So if a feoffment be pleaded by Deed, and it is trauersed Absque hoc quod feoffauit modo & forma, vpon this Collaterall Issue, modo & forma are so essentiall, as the Jury cannot find a feoffment without deed.

Section 484.

Vide Sect. proxed.

¶ *Trone est per verdict que il tient per fealtie tantum.* Here is another diuersitie to be obserued, That albeit the issue be vpon a collaterall point, yet if by the finding of part of the issue, it shall appeare to the Court that no such action lieth for the plaintife no more then if the whole had been found there modo & forma are but words of forme, as here in the case which Littleton putteth of the Lord and Tenant, appeareth.

10.E.4.7. 8.E.4.15. 20.E.4.3. 21.E.4.3. *Merlebr. cap.3.*

¶ *Car le matter del issue est le quel il tient de luy ou nemy, &c.*

Here it appeareth, that

¶ Auxy si soient Sñr & t, & le t tient dl Sñr per fealtie solement, et le Sñr distreine le tenant pur rent & le tenant porta briefe de Trespas enuers son Seignior de ses auers issint prises, & le Seignior plede que le tenant tient de luy per fealtie & certain rent, & pur le rent arere il vient a distreiner, &c. & demaunde iudgemẽt de briefe port vers luy, Quare vi & armis, &c. & lauter dit que il ne tient de luy en le maner come il suppose, et sur ceo

Also if there bee Lord and Tenant, and the Tenant hold of the Lord by fealty only, and the Lord distreine the Tenant for rent, and the Tenant bringeth a Writ of Trespasse against his Lord for his cattle so taken, and the lord plead that the tenant holds of him by fealtie and certaine Rent, and for the Rent behind hee came to distreine, &c. and demand iudgement of the Writ brought against him, *Quare vi & armis, &c.* And the other saith, that hee doth not

ceo ſont a iſſue, et troue eſt per verdict que il tient de luy per fealtie tantum, en ceſt caſe le briefe abatera, et vncore il ne tient de luy en le maner come le ſeignior auoit dit. Car le matter del iſſue eſt, le quel le tenant tient de luy ou nemy, car ſil tient de luy, coment que le Seignior diſtreina le tenant pur auter ſeruices que ne doit auer, vncore, tiel briefe de Treſpaſſe, Quare vi & armis, &c. ne giſt en vers le Seignior, mes ſerra abate.

hold of him in the manner, as he ſuppoſe, and vpon this they are at iſſue, and it is found by verdict that he holdeth of him by fealtie only. In this caſe the Writ ſhall abate, and yet hee doth not hold of him in the manner as the Lord hath ſaid, for the matter of the iſſue is whether the Tenant holdeth of him or no, for if hee holdeth of him, although that the Lord diſtreine the Tenant for other ſeruices which hee ought not to haue, yet ſuch Writ of Treſpaſſe, doth not lie againſt the Lord, but ſhall abate.

Quare vi & armis, &c.

if the matter of the iſſue be found it is ſufficient. And this rule holds in criminall cauſes. For if A. be appealed, or indicted of Murder, viz. that hee of malice prepenſed killed I. A. pleadeth that he is not guiltie modo & forma, yet the Jury may find the Defendant guilty of Man-ſlaughter without malice prepenſed, becauſe the killing of I. is the matter and malice prepenſed is but a circumſtance. *Pl. Com. 101.*

In Aſſiſe of Darreine preſentment, if the plaintife alleadge the auoydance of the Church by priuation, and the Jury finde the voydance by death, the Plaintife ſhall haue iudgement, for the manner of voydance is not the title of the Plaintife, but the voydance is the matter. *6.E.3.41.b. 25.E.3.50. 9.H.7.3. 13.H.7.14. 29.E.3.38.*

(d) If a Gardeine of an Hoſpitall bring an Aſſiſe againſt the Ordinary, hee pleadeth that in his viſitation he depriued him as Ordinary, whereupon iſſue is taken, and it is found that he depriued him as Patron, the Ordinary ſhall haue iudgement, for the deprivation is the ſubſtance of the matter. *(d) 8.E.3.70. 8.Aſſ.29. & 39. 9.E.3.338. 24.E.3.34. 5.H.4.2. 7.H.4.11. Pl.Com. 92. 3.Mar.Dier. 116. 40.E.3.35.*

The Leſſee couenant with the Leſſor not to cut downe any trees, &c. & bind himſelfe in a bond of forty pounds for performance of Couenants, the Leſſee cut downe ten trees, the Leſſor bringeth an Action of Debt vpon the bond, & aſſigneth a breach that the Leſſee cutteth downe twentie trees, whereupon iſſue is ioyned & the Jury find that the Leſſee cut downe ten, iudgement ſhall bee giuen for the Plaintife. For ſufficient matter of the iſſue is found, for the Plaintife. *Dier.2. & 3.Ph. & Mar. 115.b. Trin.22.Eliz.Rot.920. Wolmans caſe. 48.E.3.28. 34.Aſſ.3. 30.Aſſ.5. 41.E.3.28. 33.E.3.verdict.47. 22.E.3.1.b.18. E.3.48. 31.E.3.account.58. 28.Aſſ.48.*

Sect. 485.

CAury en briefe de treſpaſſe de batterie, ou des biens emports, ſi le defendant plede de rien culpable, en le mañ come le Plaintife ſuppoſe, et troue eſt que le defendant eſt culpable en auter ville, ou a auter iour que le Plaintife ſuppoſe, vncore il recouera.

ALſo in a Writ of Treſpaſſe for batterie, or for goods carried away, if the Defendant plead not guiltie, in manner as the Plaintife ſuppoſe, and it is found that the Defendant is guiltie in another Towne, or at another day then the Plaintife ſuppoſe, yet hee ſhall recouer.

CEN *briefe de treſpaſſe de battery & des biens emports, &c.*

Here Littleton ſpeaketh of Actions brought for things tranſitorie. In which caſes the wrong beeing done in one Towne, the Plaintife may not only alleage it in another Towne, as Littleton here ſaith, but alſo in another Countie, and the Jurors vpon not guiltie pleaded, are bound to find for the plaintife.

Neither can the aſſault, batteris or taking of goods, &c. alleadged in another Countie, be trauerſed without ſpeciall cauſe

cause of iustification which extendeth to some certaine place, as if a Constable of a towne in another Countie arrest the body of a man, that breaketh the peace, there he may trauerse the County (but he must not rest there) but all other places sauing in the Towne whereof he is Constable. And so it is of taking of goods, the Defendant iustifie for damage feasant in another Countie he must trauerse as before. But where the cause of the iustification is not restrained to a certaine place that is so locall as it cannot be alledged in any other Towne as in the cases before alledged, and the like, then albeit the action bee brought in a forraine Countie, yet he must alledge his iustification in the Countie where the action is brought. As if a man be beaten in the County of Middlesex, and he bringeth his action in the Countie of Buck. the Defendant cannot pleade that the Plaintife assaulted him in the County of Midd. &c. and trauerse the County, but he must pleade his iustification in the County of Buck. for that the cause of his iustification is good in any place. And so it is in case of bailment of goods, and other cases for transitory things, as for example.

Et issint en plusors auters cases, ceux parols, s. en le maner come le demaundant ou l'plaintife ad suppose, ne font ascun matter de substance del issue. Car ẽ briefe de droit, lou le mise est ioyne sur le mere droit, il est a tant a dire, et a tiel effect, s. le quel ad pluis mere droit, le tenant ou le demandant al chose en demand.

And so in many other cases these words, s. in manner as the demandant or the plaintife hath supposed, doe not make any matter of substance of the issue, for in a Writ of right, where the mise is ioyned vpon the meere right, that is as much to say, & to such effect, *viz.* whether the tenãt or demaundant hath more meere right to the thing in demand.

Trin. 30. Eliz. in the Kings bench, betweene Inglebert and Jones. And herewith agreeth a iudgement in the Court of Common pleas, Pasch. 38. Eliz. Rot. 1656.

In an action vpon the case the Plaintife declared for speaking of slanderous words which is transitorie, and laid the words to be spoken in London, the Defendant pleaded a concord for speaking of words in all the Counties of England, saving in London, and trauersed the speaking of the words in London: the Plaintife in his replication denied the concord, whereupon the Defendant demurred, and iudgement was giuen for the Plaintife. For the Court said, that if the concord in that case should not be trauersed, it would follow that by a new and subtile inuention of pleading, an ancient principle in Law, (that for transitorie causes of action the Plaintife might alledge the same in what place or Countie he would) should be subuerted, which ought not to be suffered, and therefore the Judges of both Courts allowed a trauerse vpon a trauerse in that case: And the wisedome of the Judges and Sages of the Law haue alwayes suppressed new and subtile inuentions in derogation of the Common Law. And therefore the Judges say in one booke (e) we will not change the Law which alwayes hath beene vsed. And another saith (f) it is better that it be turned to a default, then the Law should be changed, or any innouation made

A man did grant a rent, with a new inuented clause of Distresse, viz. That the Grantee should hold the Distresse against gages and pledges, and yet by the whole Court he shall gage deliuerance, for otherwise by this new inuention all Replevyes shall be taken away.

(*) See many other new inuentions in derogation of the Common Law disallowed by the Judges and by the Court of Parliament.

(h) where the Jury is bound to finde as well locall things in many cases as transitory in other Counties, see at large in my Reports.

By this which hath beene said you shall know the Law as it is now in vse in these cases, and the better vnderstand our (i) bookes when you shall reade them concerning as well locall, as transitory things, wherein you shall finde great variety of opinion in our bookes.

(e) 38.E.3.1.
(f) 2.H.4.18.
31.E.3. Gager deliuer, 5.
(*) 42.Ass.12. 4.E.3.ca.5. 18.E.3.ca.1. & ca.6. 4.H.4.ca.2.
(h) Lib.6.fo.46.47. Dowdales case. 3.E.3. Ass.446. 27.E.3.86. 1.Ass.16. 3.Ass 4. 6.Ass.4. 5.Ass.7. 18.E.3.38. 21.Ass.8. 29.Ass.3. 44.E.3.6.b. 14.H.4.35. 5.H.5.2. 10.H.6.13. 21.H.6.51. 37.H.6.2. 7.E.4.45. 18.E.4.1. 22.E.4.19. 13.H.7.17. 2.Mar.Br.attaint.104. 10.Eliz.Dier, 271.
(i) 19.H.6.48. 11.H.6.16. 43.E.3.23.b. 46.E.3.3.a. 9.H.6.62. 21.H.6.27. 14.H.8.24. 18.E.4.1. 30.H.6.2. 34.H.6.42. 14.H.6.21.22. 4.H.6.13. 33.H.6.25. 12.E.4.12. 28.H.8.Dier.29. 21.E.4.19.80. 27.H.8.19. 12.H.8.1. 11.H.4.65. 19.H.8.6.

¶ *Si le defendant plead de rien culpable.* This is a good issue if the Defendant committed no battery at all, but regularly by the Common Law if the Defendant hath cause of iustification or excuse, then can he not pleade not guilty, for then vpon the euidence it shall be found against him, for that he confesseth the battery, and vpon that issue cannot iustifie it, but he must pleade the speciall matter, and confesse and iustifie the battery.

The like Law is in other cases, and therefore this is a learning necessary to be knowne, for that the losse of most causes dependeth thereupon. As if in battery the Defendant may iustifie the same to be done of the Plaintifes owne assault he must pleade it specially, and must not pleade the generall issue, and so of the like. In trespasse of breaking his close, vpon not guilty he

he cannot giue in euidence, that the beasts came thorow the Plaintifes hedge, which he ought to kepe, nor vpon the generall issue iustifie by reason of a Rent-charge, Common, or the like. 25.H.8. Br.

In detinue the Defendant pleadeth Non detinet, he cannot giue in euidence, that the goods were pawned to him for money, and that it is not paid, but must pleade it, but he may giue in euidence a gift from the Plaintife, for that proueth, he detaineth not the Plaintifes goods. 22.H.6.33.

(d) So in an action of waste, vpon the plea Nul waste fait, he may giue in euidence any thing, that proueth it no waste, as by tempest, by lightning, by enemies, and the like, but he cannot giue in euidence iustifiable waste, as to repaire the house or the like. (e) If one doth waste, and before the action brought the Lesse repaireth it, and after the Lesor bringeth an Action of waste, and the Lesee plead Quod non fecit vastum, hee cannot giue in euidence the especiall matter. (d) 12.H.8.1. 19.E.3. waste 30. 20.E.3. waste 32. (e) 10.Eliz. Dier, 276. 2.Mar.Dier.212.

If two men be bound in a bond ioyntly, and the one is sued alone, he may plead this matter in abatement of the writ, but he cannot plead Non est factum, for it is his Deed, though it be not his sole Deed. (f) So in Whelpdales case, where a man may safely plead Non est factū, and where not, and the former bookes that treat of that matter well reconciled. (f) Lib.5.fo.119. Whelpdales case. 7.E.4.5.7.E.6.Br. Non est fact. 14. 1.H.7.15 14.H.8.28. Pl.Com. Dive & Man case. 36.H.8.Dier 59. 2.Mar. Dier 112. 1.Eliz.Dier.167.

(g) Vpon Plene administrauit pleaded by an Executor Et iissint riens inter maines, if it bee proued that he hath goods in his hands which were the Testators, he may giue in euidence, that he hath paid to that value of his owne money, and need not pleade it specially. (g) Hill.10.H.8. Rot.323. in Communi banco. Et Mich. 6.E.6. in Communi banco Bendloes.

In an Assise if the Tenant plead Nul tort nul disseisin, he cannot giue in euidence a Release after the Disseisin, but a Release before the Disseisin he may, for then there is no Disseisin vpon the matter. 7.H.5.9. 6.H.7.10. 34.E.3.Dreit.29.

In a writ of Right if the Tenant ioyne the Mise vpon the mere right, hee cannot giue in euidence a collaterall warrantie, for he hath not any right by it, and therefore it ought to haue beene pleaded.

Of this learning you shall reade plentifully in our bookes, and in my Reports. This little taste shall here suffice to make the reader capable of the rest. Regularly whensoeuer a man doth any thing by force of a warrant or authority, he must plead it. 9.E.3.32. 8.E.3.24. 33.E.3.Verdit. 18.H.6.24. 39.H.6.38. 18.E.3.19. Pl.Com.81.173. 21.H.7 76 16. Kelwey 21.E.4.11. 22.E.4.45. 13.H.7.13. Stanf.Pl.Cor.15. 22.Ass.55. 37.H.6.21.

But all that hath beene said must be vnder two cautions. First that whensoeuer a man cannot haue aduantage of the especiall matter by way of pleading, there he shall take aduantage of it in the euidence. For example the rule of Law is, that a man cannot iustifie in the killing or death of a man, and therefore in that case, he shall be receiued to giue the especiall matter in euidence, as that it was Se defendendo, or in defence of his house in the night against theeues and robbers or the like.

Secondly, That in any action vpon the case, Trespasse, Battery, or of false imprisonment against any Iustice of peace, Maior, or Bailife of Citie or Towne corporate, Headborough, Port-reue, Constable, Tithingman, Collector of Hudsdie or Fifteens, in any his Maiesties Courts in Westminster, or elsewhere concerning any thing by any of them done by reason of any of their offices aforesaid, and all other in their aide or assistance or by their commandement, &c. they may plead the generall issue, and giue the especiall matter for theire excuse or iustification in euidence. 7.Iac.ca.5.

In an Action of trespasse or other suite against any person for taking of any Distresse or other Act doing by force of the Commission of Sewers, the Defendant in any such Action shall and may make Auowrie, Conusance or Iustification generally, that it was done by authority of the Commission of Sewers for Lotte or Tax assessed by that Commission, &c. and the Plaintife shall reply he did it of his owne wrong without such cause. And both these acts were made for auoyding of prolixity and captiousnesse of pleading tending to the great charge and danger of Officers and ministers of Iustice, &c. 23.H.8.ca.5.

Euidence, *Euidentia.* This word in legall vnderstanding doth not only containe matters of Record, as Letters patents, Fines, Recoueries, Inrolments, and the like, and writings vnder seale, as Charters and Deeds, and other writings without seale, as Court Rolles, Accounts, and the like, which are called Euidences Instrumenta, but in a larger sence it containeth also Testimonia, the Testimony of witnesses, and other proofes to be produced and giuen to a Iury, for the finding of any issue ioyned betweene the parties. And it is called Euidence, because thereby the point in issue is to be made euident to the Iury. Probationes debent esse euidentes, (id est) perspicuæ & faciles intelligi. But let vs now returne to Littleton.

¶ *Ou a auter iour que le Plaintife suppose.* (g) As if the Trespasse were done the fourth of May, and the Plaintife alledgeth the same to be done the fifth of May or the first of May, when no trespasse was done, yet if vpon the euidence it falleth out, That the Trespasse was done before the Action brought, it sufficeth: and this is warranted by Littleton who speaketh indifinitely, that the Iurie may find the Defendant guiltie at another day than the Plaintife supposeth.

¶ *Et a tiel effect.* Here is to be obserued, That the Law of England

and reſpecteth the effect and ſubſtance of the matter, and not enerie nicitie of ſome ap circumſtance, Qui hæret in litera, hæret in cortice, & apices iuris non ſunt iura.

Section 486.

¶ Item ſi home ſoit diſſeiſie, et le Diſſeiſor deuie ſeiſie, &c. et ſon fits et Heire eſt eins per diſcent, et le Diſſeiſee enter ſur lheire Diſſeiſor, le quel entrie eſt vn diſſeiſin, &c. ſi lheire port Aſſiſe ou Briefe de Entre en nature de Aſſiſe, il recouera.

ALſo if a man bee diſſeiſed, and the diſſeiſor dieth ſeiſed, &c. and his ſonne and heire is in by diſcent, and the Diſſeiſee enter vpon the heire of the Diſſeiſor, which entrie is a Diſſeiſin, &c. if the heire bring an Aſſiſe or a Writ of Entrie in nature of an Aſſiſe, hee ſhall recouer.

¶ AND the reaſon hereof is, for that in the writ of Right mentioned in the next Section the charge of the grand Aſſiſe vpon their Oath is vpon the meere right, and not vpon the poſſeſſion.

Sect. 487.

¶ CAr ſi le heire le Diſſeiſor, &c.

Here is a diuerſitie to bee obſerued concerning that which hath beene ſayd, when the poſſeſſion ſhall draw the right of the land to it, and when not. And therefore when the poſſeſſion is firſt, and then a right commeth thereunto, the entrie of him that hath right to the poſſeſſion ſhall gaine alſo the right, which as before it appeareth in thoſe caſes there put, followeth the poſſeſſion, and the right of poſſeſſion draweth the right vnto it, but when the right is firſt, and then the poſſeſſion commeth to the right, albeit the poſſeſſion be defeated, (as here in Littletons caſe it is by the heire of the Diſſeiſor) yet the right of the Diſſeiſee rematneth.

5a.E.3.7.

7.Sect.447.

¶ *Briefe Dentrie en le Per.* A. dieth ſeiſed, and the land diſcendeth to B. his ſonne, before he entreth an eſtranger abateth and dieth ſeiſed, B. entreth, againſt whom the heire of the Abator recouereth in an Aſſiſe, B. may haue a writ of Mort-danceſter

5.Aſſ.1.10.Aſſ.16.

¶ MEs ſi lheire port Briefe de droit enuers le Diſſeiſee il ſerra barre, pur ceo que quant le graund Aſſiſe eſt iure, lour ſerement eſt ſur le mere droit, et nemy ſur le poſſeſſion. Car ſi lheire le Diſſeiſor ſuiſt vn Aſſiſe de Nouel diſſeiſin, ou briefe Dentre en natuꝝ daſſiſe, et recoueraſt vs le Diſſeiſee, et ſuiſt executiõ, vncore poit le Diſſeiſee auer bꝛe Dentre en le Per enuers luy, de le diſſeiſin fait a luy per ſon pere, ou il poit auer enuers lheire briefe de droit.

BVt if the heyre bring a Writ of Right againſt the Diſſeiſee, he ſhall be barred, for that when the graund Aſſiſe is ſworne, their Oath is vpon the meere right, and not vpon the poſſeſſion: For if the Heyre of the Diſſeiſor ſue an Aſſiſe of *Nouel diſſeiſin*, or a Writ of *Entrie* in nature of an Aſſiſe, and recouers againſt the Diſſeiſee, and ſueth execution, yet may the Diſſeiſee haue a Writ of *Entrie* in the *Per*, againſt him, for the Diſſeiſin made to him by his father, or he may haue againſt the heire a writ of Right.

dauncher, and recouer the land againſt him. And if the Diſſeiſin had beene done to A. ye. then after the recouerie in the Aſſiſe B. ſhould haue had a Writ of Entrie in the Per, becauſe the heyre that is in by diſcent is in the Per.

Sect. 488.

¶ MES ſi le heyre doit recouer enuers le Diſſeiſee en le caſe auantdit, per bꝛe de dꝛoit, donque tout ſon dꝛoit ſerroit clerement ale, par ceo que iudgement final ſerroit done enuers luy, que ſerroit encounter reaſon, ſi le Diſſeiſee ad le pluis meere dꝛoit, &c.

BVt if the Heire ought to recouer againſt the Diſſeiſee in the caſe aforeſayd by a Writ of Right, then all his right ſhould be cleerely taken away, for that iudgement finall ſhall bee giuen againſt him, which ſhould bee againſt reaſon where the Diſſeiſee hath the more meere right.

¶ *Iudgement final.* The forme whereof you ſhall ſee in the laſt Section of this Chapter.

¶ *Que ſerra encounter reaſon.* Argumentum ab inconuenienti. *V. Sect. 87. & 2.*

Section 489.

¶ ET ſaches mon fits que en bꝛiefe de dꝛoit, apꝛes ceo que les quater chiualers ont eſlie le grand Aſſiſe, donques il nad pluis greinder delay que en vn bꝛiefe de Formedon, apꝛes ceo que les parties ſont a iſſue, &c. et ſi le miſe ſoit ioyne ſur le Battaile, donques il ad meind delay.

AND know (my ſonne) that in a Writ of Right after the foure Knights haue choſen the grand Aſſiſe, then he hath no greater delay than in a Writ of *Formedon*, after the parties be at iſſue, &c. And if the Miſe bee ioyned vpon battaile, then hee hath leſſer delay.

¶ B *Attaile.* See for this word in the laſt Section of this Chapter.

¶ *Iſſue, &c.* Or Demurrer, which is an Iſſue in Law.

Sect. 490. & 491.

¶ ITem releaſe de tout dꝛoit, &c. en aſcun caſe eſt done, fait a celuy que eſt ſuppoſe tenãt en Ley, coment que il nad eſtate en les Tenements. Sicome en Præcipe quod reddat, ſi le Tenãt aliena la terre pendant le bꝛiefe, et puis le demaundans releſſa a luy

ALſo a releaſe of all the right, &c. in ſome caſe is good made to him which is ſuppoſed Tenant in Law, albeit he hath nothing in the Tenements. As in a *Præcipe quod reddat*, if the Tenant alien the land hanging the Writ, and after the Demandant releaſeth

luy tout ſon droit, &c. cel releaſe eſt bone, pur ceo que il eſt ſuppoſe deſtre tenant per le ſuit del Demandant, et uncore il nad riens en la Terre al temps de Releaſe fait.

to him all his right, &c. this Releaſe is good, for that hee is ſuppoſed to be Tenant by the ſuit of the Demandant, and yet hee hath nothing in the land at the time of the Releaſe made.

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CEſt meſme le manner eſt, ſi Præcipe quod reddat le tenant vouche, & le Vouchee ent en le Garrantie, ſi apres le Demandant releſſa al vouchee tout ſon droit, ceo eſt aſſets bone, pur ceo que l'Vouchee apres ceo que il auoit enter en le Garrantie, eſt Tenant en Ley al Demandant, &c.

IN the ſame manner it is in a *Præcipe quod reddat*, the tenant vouch, and the Vouchee enters into Warrantie, if afterward the Demand releaſe to the vouchee al his right, this is good enough, for that the Vouchee after that he hath entred into Warranty is Tenant in Law to the Demandant, &c.

CHere it doth appeare, That there is a Tenant in Deed and a Tenant in Law, and Littleton in this and the next Section putteth two examples of Tenants in Law, viz (h) the Tenant to a Præcipe after alienation, and of the Vouchee, whereof ſomewhat hath beene ſayd before.

And it is obſeruable, That Littleton ſaith, That in both caſes hee is Tenant in Law to the Demandant, and yet he hath nothing in the Land. And therefore if after the Vouchee hath entred into warrantie, and become Tenant in Law, an Anceſtor collaterall of the Demandant releaſeth to the Vouchee with warrantie, he ſhall not plead this againſt the Demandant, for that the Releaſe by the Eſtranger is voyd, which beſides the authorities before touched, appeareth by Littleton himſelfe, * for he ſaith, That he is Tenaunt in Law to the Demaundent, whereby he excludeth, that he is Tenant in reſpect of any eſtranger.

(h) 10.E.4.13. 12.Aſſ.41. 22.Aſſ.13.23.E.3.28. 25.E 3.40.38.E.3.10.11 7.E.3. 6. 19.E.3.tit. Reſceit. 34.E.3.tit. Reſceit, 9.E.4.15.39.H.6.40.17.vſ. 24.8.H.7.5.20. Aſſ.2.14.E. 3. Procedendo, 4.9.E.3.17. 32 E.3. Quare Impedit 2. Dyer 17.Eliz.341. Sect.447.

* Vid.uant, Sect.447.

Section 492.

CNOta, there bee two kind of Actions, viz. one that concern the Pleas of the Crowne, Placita Coronæ, or Placita Criminalia, another that concerne Common Pleas, Placita Communia ſeu Ciuilia. Of that which concerneth Pleas of the Crowne, Littleton ſpeaketh hereafter in this Chapter. Of Actions concerning Common Pleas, Littleton ſpeaketh in this place. And theſe are threefold (that is to ſay) Reall, Perſonall and Mixt. Placitorum aliud perſonale, aliud reale, aliud mixtum. Or Actionum quædam ſunt in

Glanu.li.1.ca.1. Bract.li.3. fo.101. Brit.fo.71. Flet li.1. ca.15.& 16.

Idem ca.2.§.1. Bract.vbi ſup. Flet.li.1.ca.1.

CItem quant al releaſes dactions reals et p̃ſonals, il eſt iſſint, que aſcuns actions ſont mixt en le realty et en le perſonaltie, ſicome vn action de Waſte ſue enuers tenant a terme de vie, ceſt action eſt en le realtie, pur ceo que le lieu waſte ſerra recouer. Et auxy en le per-

ALſo as to releaſes of Actions Realls, and Perſonals it is thus. Some actions are mixt in the realtie and in the perſonaltie, as an action of waſt ſued againſt Tenant for life. This Action is in the Realtie, becauſe the place waſted ſhall bee recouered, and alſo in the Perſonaltie, becauſe

perſonaltie, pur ceo que treble damages ſerront recouers p̄ le toꝛtious waſt fait p̄ le tenant, & pur ceo en ceſt action, vn releas dactions reals eſt bon plee en barre, et iſſint eſt vn releas dactions perſonals.

treble dammages ſhall bee recouered for the wrongfull waſte done by the Tenant, And therefore in this action a releaſe of actions reals is a good plea in barre, and ſo is a Releaſe of actions perſonals.

Rem, quædam in Perſonam, & quædam mixtæ. And generally, Actio is defined. (i) Actio nihil aliud eſt quam ius proſequendi in iudicio quod ſibi debetur. Or Action neſt auter choſe que loiall demande de ſon droit.

(i) *Vide Sect. 444. Bract. lib. fol. 98. Flor. lib 1. cap 15. Mirr. cap. 2. §. 1.*

(k) And by the releaſe of all Actions, cauſes of action be releaſed, but within a ſubmiſſion of all actions to arbitrement, cauſes of action are not contained.

(k) *Lib 8 153. Abbams caſe 35. H.8. Dier 57. 5 Mar 217. Vide 36. H.6. Vide 42. E. 3. 22. 23.*

¶ *Tenant pur vie.* And ſo it is if it bee brought againſt tenant for yeares becauſe it agreeth with the reaſon of Littleton here rendred, viz that the place waſted ſhall be recouered, and therefore ſoundeth in the realtie.

¶ *Auxy en le perſonaltie pur ceo que treble damages ſerra recouers*, which doe ſound in the perſonaltie. Wherefore Littleton concludeth, that in an Action mixt a Releaſe of all actions reals is a good barre, and ſo is a releaſe of all actions perſonals.

And here is to be obſerued a diuerſitie betweene the act of the partie, & an act in Law, for a man by his owne act cannot alter the nature of his action, and therefore if the Leſſee for life or Leſſee for yeares doe waſte, now is an action of waſte giuen to the Leſſor, wherein he ſhall recouer two things, viz. the place waſted, and treble dammages, in this caſe if the Leſſor releaſe all actions reals, he ſhall not haue an Action of waſte in the perſonaltie only. And if he releaſe all Actions perſonals he ſhall not haue an Action of waſte in the realtie only.

(l) And ſo it is if the Leſſee doth waſte, and after ſurrendreth to the Leſſor his eſtate, and the Leſſor accept thereof, the Leſſor ſhall not haue an Action of Waſte.

(l) *19. H.6. 66. 14. H.6. 14. 11. R 2. Waſt. 99. 14 H.8. 14 23. H.8. Br. Waſte.*

But by act in Law the nature of the action may be changed, as if a man make a Leaſe pur terme dauter vie, and the Leſſee doth waſte, and then Ceſty que vie dieth, an Action of waſte ſhall lie for dammages only becauſe the other is determined by act in Law.

23. *H.8. Br. Waſte.*

And againe, hereupon is another diuerſitie to be obſerued, that in caſe when an action is well begun, and part of the Action determineth by act in Law, and yet the like action for the reſidue is giuen, there the writ ſhall not abate, but proceed. But where by the determination of part the like action remayneth not for the reſidue, there the Action well commenced ſhall abate. As if an Action of Waſte be brought againſt tenant, pur terme dauter vie, and hanging the writ Ceſty que vie, dieth, the writ ſhall not abate, but the Plaintife ſhall recouer dammages only, becauſe if Ceſty que vie had died before any action brought the Leſſor might haue an action of waſte for the dammages: So if an Eiectione firme be brought, and the tearme incurreth hanging the action, yet the Action ſhall proceed for dammages only, becauſe an Eiectione doth lie after the tearme for dammages only. But if tenant pur auter vie, bring an Aſſiſe, and Ceſty que vie dieth, hanging the writ, albeit the writ were well commenced, yet the writ ſhall abate, becauſe no Aſſiſe can be maintainable for dammages only.

11. *H.6.43. 9. E. 4. 50. 21. E 3. 72. 18. E. 3. 28. 9. H. 5. 30.*

So if an Action of waſte be brought by Baron and Feme in remainder, in eſpeciall taile and hanging the writ the wife dieth without iſſue, the writ ſhall abate, becauſe euery kind of Action of waſte muſt be ad exhæredationem.

2. *H.4. 22. 6 E. 2. briefe 807.*

If a writ of Annuitie be brought, and the Annuitie determineth hanging the writ, the writ faileth for euer, becauſe no like Action can be maintained for the Arrerages only, but for the Annuitie and Arrerages.

34. *H.6. 20. 9 E. 4. 19. 14. H. 7. 31. 18. E. 3. Secta ſuetas 10.*

But where dammages only are to be recouered, there albeit by act in Law, the like Action lieth not afterwards, yet the Action well commenced ſhall proceed, (m) as if a Conſpiracie be brought againſt two, and one of them dieth hanging the writ, it ſhall proceed.

(m) 22. *R. 2. briefe 888. 18 E. 4. 1.*

And in an Aſſiſe of Nouell diſſeiſin, a writ of Annuitie, Quare impedit and other mixt Actions, a releaſe of Actions reals is a good Plea, and ſo it is of a releaſe of Actions perſonals.

2. *H.4. 13. 9. H.6. 57.*

But if three Ioyntenants be diſſeiſed, and they arraigne an Aſſiſe, and one of them releaſe to the Diſſeiſor all Actions perſonals, this ſhall barre him, but it ſhall not barre the other Plaintife, for hauing regard to them the realtie ſhall bee preferred, & omne maius trahit ad ſe minus dignum. (n) And in a writ of Ward brought by two, the releaſe of the one ſhall not grieue the other, but ſhall enure to his benefit, for he ſhall recouer the whole ward, and hold his companion out.

30. *H.6. Barre 59.*

(n) 30. *H.6. vbi ſup. a. 45. E 3. fol. 6. 18. E. 3. fol. 56. 21. H 6. 18. a.*

But here a diuerſitie is to be obſerued betweene reall actions wherein dammages are to bee reco-

recouered at the Common Law, as in an Assise, &c. and reall actions where dammages are not to be recouered by the Common Law, but are giuen by the (o) Statute, for there a release of all Actions personals is no barre, as in the Writ of Dower, Entrie sur disseisin in le per &c. Mordanc', Aiel, &c.

(o) *Merton cap.1. in dower. Glouc. cap.1.*

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THen Quare impedit, vn releas dactions personals est bone plee, & issint est vn release dactions reals, Per Martin, qd' fuit concessum H.9.H.6.57.*

AND in a *Quare impedit*, a release of Actions personals is a good Plea, and so is a release of Actions reals, *Per Martin. Quod fuit concessum. Hill.9.H.6.fol.57.*

9.H.6.57.
22.H.6.27.b.

THis is an addition to Littleton, which although it be Law, and the Booke truly cited, yet I passe it ouer. But yet note by the way that a release of Actions personals, is also a good barre in a Quare impedit, be cause it is an Action mixt.

Sect. 494.

THE disseisor bien poet pleder, &c.

Note, euery man shall plead such Pleas as are proper for him, and apt for his defence to be pleaded. (q) As a disseisor that hath nothing in the land may plead a release of actions personals, because dammages are to bee recouered against him, and therefore for his defence hee may plead it, but a release of actions reals hee cannot plead, because he hath no estate in the Land, and none shall plead a release of Actions reals in an Assise, but the tenant of the Land. Et sic de cæteris. But the Tenant in an Assise shall plead a release of Actions personals to the Disseisor, for that Plea proueth that the Plaintife hath no cause of action against him.

(q) 11.Ass.9. 18.E.3.2.23. 24.31.E.3 *quare Imp.* 161. 7.E.3.5.9.E.3.6.39.E.3.30 22.E.3.2.13.H.4.7.3.E.2. *quare imp.*44. 38.E.3.30.31. 5.E.3.25.21.E.3,16.17. 5.H.7.34.8.H.4.14.22.H.6 28.26.1.H 7.34.27.E.3.81. 32.H.6.15.b.17.Ass 25. 2.H.7.14.13.H.8.13.14. 44.E.3.12.46 E.3.13. 16.E.4.11.24.E.3 34. 4.E.4.18.7.H.4.34. 2.R.2.encumbent 4.33.E.3. *quare Imp.*194.

13.E.4.2.6.

THE meisme le maner est en assise de Nouel disseisin, pur ceo que il est mixt en le realtie, et & le personalty. Mes si vn tiel ass. soit arraigne enter le disseisor et le tenant, le disseisor bien poit plede vn releas dactions personals, pur barrer lass. mes nemy vn releas dactions reals, car nul pledera releas dactions reals en ass. forsqr le tenant.

IN the same manner it is in an Assise of *Nouel disseisin*, for that it is mixt in the realtie and in the personaltie; but if such an Assise be arraigned bee against the Disseisor, and the Tenant, the Disseisor may well plead a release of Actions personals to barre the Assise, but not a release of Actions reals, for none shall plead a release of Actions reals in an Assise, but the tenant.

If the Disseisee release to the Disseisor all actions reals, and the Disseisor maketh a feoffement in fee, and an Assise is brought against them, the Feoffee shall not plead the release to the Disseisor, for that he is not priuie to the release, for a release of actions shall only extend to Priuies.

If a Disseisor make a lease for life the remainder in fee, and the Disseisee releaseth all Actions, to the Tenant for life, after the death of Tenant for life, he in the remaynder shall not plead the said release.

(r) 19.H.6.23.a.

If the Disseisee release all Actions to the Disseisor, and die, this doth barre him, but for his life, for after his decease his heire shall haue an Action (r) as some haue said. And hereby may appeare a manifest diuersitie between a release of a Right, and a release of Actions.

Sect.

Section 495.

¶ Item, en tiels actions reals q̄ couient deſtre ſue enuers le tenant del franktenement, al tenant ad vn releas dactions reals del demandant fait a luy deuant le briefe purchaſe, et il plede ceo, il eſt bon plee pur le demandant adire, que celuy que pleda le plee nauoit rien, en le franktenement al temps del releas fait, car adonque il nauoit cauſe dauer aſcun action real enuers luy.

ALſo in ſuch Actions Reals which ought to bee ſued againſt the tenant of the Free-hold, if the tenāt hath a releaſe of actions reals from the Demandant made vnto him before the Writ purchaſed, and he plead this, it is a good plea for the demandant to ſay, that hee which plead the Plea had nothing in the Freehold at the time of the releaſe made, for then hee had no cauſe to haue an Action reall againſt him.

¶ This is euident enough by that which hath beene ſaid, that a releaſe of all actions reals muſt be made to him that is Tenant of the Land, becauſe a reall Action muſt be brought againſt ſuch a Tenant.

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¶ Item en tiel cas ou home poet enter en Terres ou Tenements, et auxy poit auer vn Action real de ceo que eſt done p la Ley enuers le Tenant, ſi en ceſt caſe le demandant releſſa al tenant touts maners de Actions reals, vncore ceo ne tolle le demandant de ſon entrie, mes le demandant bien poit enter nient contreſtēt tiel releas pur ceo que nul choſe eſt releſſe forſque laction, &c.

ALſo in ſuch caſe where a man may enter into Lands or Tenements, and alſo may haue an Action reall for this, which is giuen by the Law againſt the tenant, if in this caſe the Demandant releaſeth to the Tenant all manner of Actions realls, yet this ſhall not take the Demaundant from his entrie, but the Demaundant may well enter notwithſtanding ſuch releaſe, for that nothing is releaſed but the Action, &c.

¶ *Poet enter.* Here it appeareth, That where a man may enter, a Releaſe of all Actions doth not barre him of his right, becauſe he hath another remedy, viz. to enter. And this is agreeable with the authorities of our (f) Bookes. But where his entrie is not lawfull, there a Releaſe of all Actions is by conſequence a barre of his right, becauſe he hath releaſed the mean whereby he might recouer his right. As if the Diſſeiſee releaſe all Actions to the heire of the diſſeiſor, which is in by Diſcent, he hath no remedie to recouer the land, but yet the diſſeiſee hath a right, for that he hath releaſed his Action, & not his right as ſhal be ſaid hereafter in the Chapter of Remitter in his proper place. If the heire of the Diſſeiſor make a feoffment in fee to two, and the diſſeiſee releaſeth to one of the Feoffees all Actions and hee dieth, the Survivour ſhall not plead this releaſe for the cauſes aboueſaid. And hereby alſo again appeareth another diuerſitie betweene a releaſe of a right, and a releaſe of Actions.

(f) 18.E.3.34. 19.E.3. Title 35.

19.Aſſ.3. 30.E.3.19.6. 19.H.6.4.6. 21.H.7.23.b. 7.H.6.6.

It is to be obſerued when a man hath ſeuerall remedies for one and the ſelfeſame thing in it reall, perſonall, or mixt, albeit he releaſeth one of his remedies, he may vſe the other.

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CEN meſme le maner eſt de choſes perſonals, ſicom home a tort prent mes biens, ſi ieo releſſa a luy touts actions perſonals, vncore ieo puiſſe p le ley prender mes biens hors de ſon poſſeſſion.

IN the ſame manner is it of things perſonall, as if a man by wrong take away my goods, if I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

This of it ſelfe is euident.

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Glanuil.lib.10.ca.13.

CBRiefe de detinue. Breue de detentione dicitur a detinendo, becauſe Detinet is the principall word in the writ. And it lyeth where any man comes to goods either by deliuery, or by finding. In this writ the Plaintife ſhall recouer the thing detained, and therefore it muſt bee ſo certaine as it may be knowne, and for that cauſe, it lyeth not for money out of a bagge, or cheſt, and ſo of corne out of a ſacke and the like, theſe cannot be knowne from other. (t) A man ſhall haue an action of Detinue of Charters which concerne the inheritance of his land if hee know the certaintie of them, and what land they concerne, or if they be in Bagge ſealed, or Cheſt locked, though he knoweth not the certaintie of them: and it is good politie (if poſſibly he can) in that caſe to declare of one Charter in eſpeciall, (u) and then the Defendant ſhall not wage his Law. (x) An action of Detinue for Charters doth ſound in the realty, for therein ſummons and ſeuerance lyeth, and in Detinue of goods a Capias doth lye, but for Charters in ſpeciall a Capias lyeth not, and yet a Releaſe of actions perſonals in a writ of Detinue of Charters is a good barre.

41.E.3.2.

(t) 41.E.3.2. 8.H.6.18. 28.29. 21.E.3.28.. 3.H.6.19. 30.H.6.4. 9.H.6.18.

(u) 10.H.6.28. 21.H.6.1. 14.H.6.4. 14.H.4.23.24. 27.

(x) 20.H.6.45. 19.E.3. Fauerons 14. 31.E.3.ib.32. 42.E.3.13. 40.E.3.25.

CIem ſi home ſoit diſſeiſie, & le diſſeiſor fait feoffment a diuers perſons a ſon vſe, et le diſſeiſor continualment prift les profits, &c. et le diſſeiſee releſſa a luy touts

ALſo if I haue any cauſe to haue a a Writ of Detinue of my goods againſt an other, albeit that I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion, becauſe no right of the goods is releaſed to him but only the action, &c.

Sect. 499.

CPer cauſe del Statute. That is to ſay the Statute of 4.H.4. cap.7. and 11 H.6.ca 4.

CCar ſil voet pleder le releaſe generalment. Here it appeareth that when the Statute had giuen the action reall a-

ALſo if a man bee diſſeiſed, and the diſſeiſor maketh a feoffmēt to diuers perſons to his vſe, and the diſſeiſor continually taketh the proffits, &c. & the diſſeiſee releaſe

touts actions reals, et puis il ſuiſt vers luy vne Dentre en nature daſſiſe p cauſe de leſtatute, pur ceo que il prent les profits, &c. Quære, comẽt le diſſeiſor ſerra aide per le dit releas: car il voile pleder le releas generalment, donques l' demandãt poit dire q̃ il nauoit riens en le frankte-nement al temps del releas fait, & ſil pleda releas ſpecialment, donques il couient conuſtr vn diſſeiſin, et donqs puit le demandant enter en le fre, &c. p ſon conuſans de l' diſſeiſin, &c. Mes peraduenture p eſpecial pleader il luy poit barr̃ de lactiõ que il ſuiſt, &c. coment le demandant poit enter.

to him all actions reals, and after hee ſueth againſt him a Writ of entrie in nature of an aſſiſe by reaſon of the ſtatute, becauſe hee taketh the proffits, &c. *Quære*, how the diſſeiſor ſhall bee ayded by the ſaid releaſe, for if he will plead the releaſe generally, then the demandant may ſay that hee had nothing in the freehold at the time of the releaſe made, and if hee plead the releaſe ſpecially, then he muſt acknowledge a diſſeiſin, and then may the demandant enter into the land, &c. by his acknowledgement of the diſſeiſin, &c. but peraduenture by ſpeciall pleading he may barre him of the actiõ which hee ſueth, &c. though the demandant may enter.

gainſt the power of the profits, it enableth him to take and pleade a Releaſe of all actions reals, and yet he hath neither Ius in re, nor jus ad rem, which point is worthy of obſeruation for manifeſtation of the equity of the Law. 3.H.7.2.

¶ *Donques il couient conuſtre vn diſſeiſin, &c.* In a Writ of Dower the Tenant pleaded that before the writt purchaſed A. was ſeiſed of the land, &c. vntil by the Tenant himſelfe hee was diſſeiſed, and that hanging the writt A. recouered againſt him, & iudgement of the writ, and adiudged a good plea, in which plea the Tenant confeſſed a Diſſeiſin in himſelfe. 15.E.4.4.b

¶ *Donques poit le demandant enter.* So might he haue done in this caſe that Littleton putteth, albeit the Tenant confeſſed no diſſeiſin. And therefore it is no preiudice to the Tenant to confeſſe a diſſeiſin in himſelfe, &c and then, as Littleton here holdeth, the action ſhall be barred.

But the reader is to obſerue, that now by the Statute of 27. H 8. ca 10. which execute the poſſeſſion to the vſe, all the Statutes againſt Ceſty q̃ vſe, or pernor of the profits haue loſt their force. 28.H.8.Dier.35. 27.H.8.ca.10.

Sect. 500.

¶ Tẽ ſi home ſuiſt appeale de felony del mort ſon anceſter enuers vn auter, coment que lappellant releſſa al defendant touts maners dactions reals et ꝑſonals ceo ne aidera my le defendãt, pur ceo que ceſt appeal neſt pas

ALſo if a man ſue an appeale of felony of the death of his anceſter againſt another, though the appellant releaſe to the defendant all manner of actions reall & perſonall, this ſhall not aide the defendant for that this appeale is not

¶ Our Author having ſpoken of Common pleas now treateth of certaine Pleas criminall or Pleas of the Crowne whereof it is ſaid, (a) Item, criminalium alia maiora, alia minora, alia maxima, ſecundum criminũ quantitatem; Sunt enim Crimina Maiora & dicuntur capitalia eò quod vltimum inducunt ſuppliciũ, &c. Minora verò, quæ fuſtigationem inducunt, vel pœnam pilloralem, vel tumboralem, vel (a) *Bracton, lib.3, fo.101.b.*

vel carceris inclusionem, &c.

(b) Criminalium quædam sententialiter mortem inducant, quædam vero minime. (c) De peche est briefe diuision, car est mortal ou venial solonque ceo que appiert es paines. And that crime is called mortall or corporall: mortall, because it deserueth death, and such crimes are called Venial, as may bee redemed or satisfied by some other punishment than by death.

(b) Flet.li.1.ca.15.

(c) Mir.ca.1.§.4. & ca. 4. des paines en diuers maners.

¶ *Appeale de Felonie.* (x) Appellum signifieth accusatio, an Accusation, and therefore to appeale a man is as much as to accuse him, and in (y) antient Bookes he that doth appeale is called Accusator, and is peculiarly in legall signification applied to Appeales of three sorts. First, Of wrong to his Ancestor, whose heire male he is, and that is onely of death, whereof our Author here speaketh. The second is of wrong to the husband, and is by the wife onely of the death of her husband to be prosecuted. The third is of wrongs done to the Appellants themselues, as Robberie, Rape, and Mayhem. The word Appellum is deriued of Appeller, to call, because Appellans vocat reum in iudicium. He calleth the Defendant to iudgement, and the Plaintife is called the Appellant.

(x) Mir.ca.2.§.7. Bract.li.3 fo.137. Brit.ca.22.23. Flet.li.1.ca.31.32.33.

(y) Glanuill Lib.7.cap.9. Et lib.14.cap.1.et 3.

action real, entant que lappellant ne recouera aſcun realtie en tiel Appeale: Ne tiel appeale neſt pas Action perſonal, entant que le tort fuit fait a ſon Auncеſtor, et nemy a luy. Mes ſil releſſa a le Defendant tout manners Actions, donque il ſerra bone barre en Appeale. Et iſſint home poit beyer que releaſe de touts maners dactions, eſt meliор que Releas de Actions reals & perſonals, &c.

an Action reall, in as much as the Appellant shall not recouer any Realtie in such Appeale, neither is such Appeale an Action personall, in as much as the wrong was done to his Ancestor, and not to him. But if he release to the Defendant all manner of Actions, then it shall be a good barre in an Appeale. And so a man may see that a Release of all manner of Actions is better than a release of Actions reals and personalls, &c.

¶ *Appeale.* Appellatio **is a remooуing of a cause in any Ecclesiasticall Court to a Superior, but of this there needeth no speech in this place.**

24.H.8.ca.12.1.El.ca.1.

¶ *De mort.* **Appeale of death is of two sorts, of Murder and** of Homicide. **Murder is when one is slaine with a mans will, and with malice prepensed or forethought. Homicide as it is legally taken, is when one is slaine with a mans will, but not with malice prepensed. Chance-medle, or** Per infortunium, **is when one is slaine casually, and by misaduenture, without the will of him that doth the act, whereupon death insueth, but of this no Appeale doth lie. Murder commeth of the Saxon word** Mordreu.

Were is an old Saxon word sometime written Wera, and signifieth the price of the life of a man, Estimatio capitis, that is, so much as one payd for the killing of a man, by which it appereth, that such gouernment was in those dayes, as slaughters of men were most rarely committed, as Master Lambard collecteth. And you shall not read of any insurrection or rebellion before the Conquest, when the view of Frankpledge and other antient Lawes of this Realme were in their right vse.

Lamb. Expos. verb. Estimatio Flet.li.1.ca 42. Houed.f.344.

¶ *Mes ſil releaſe al Defendant touts manners d'actions, &c.* **And the reason is, for that then all Actions, as well criminall as reall, personall and mixt, be released. But a release of all Actions reall and personall cannot barre an Appeale of death, because that Release extendeth to common or ciuile Actions, and not to Actions criminall: but releases of all Actions criminall or mortall, or concerning Pleas of the Crowne, are good barres in an Appeale of Death, and so the (&c.) in the end of this Section is well explained.**

31.H.6.16.

Sect.

Section 501.

¶ Item en appeal de Robberie, a l'defendant voit pleader vn releaſe de l'appellant de touts Actions perſonals, ceo ſemble nul Plee. Car Action di Appeale, lou l'apellee aña iudgement de mort, &c. eſt pluis hault que Action perſonal eſt, et neſt pas proprement dit Action perſonal: Et pur ceo ſi le defendant voiloit plead vn releaſe del appellant de barrer luy d'appeale, en ceſt caſe il couient dauer vn releaſe d' touts mañs dappeals, ou touts manners d'actions, cõe il ſemble, &c.

ALſo in an Appeale of Robberie, if the Defendant will plead a releaſe of the Appellant, of all Actions perſonalls, this ſeemeth no Plea: for an Action of Appeale where the Appellee ſhall haue iudgement of death, &c. is higher than an Action perſonall is, and is not properly called an action perſonall, and there if the Defendant will plead a Releaſe of the appellant, to barre him of the Appeale, in this caſe hee muſt haue a Releaſe of all manner of Appeales, or all manner of Actions, as it ſeemeth, &c.

¶ *Robberie.* Roboria properly is when there is a felonious taking away of a mans goods from his perſon, and it is called Robberie, becauſe the goods are taken as it were De la Robe: from the Robe, that is, from the perſon: but ſometimes it is taken in a larger ſence. 22.Aſſ.39. W.1.ca.12.

¶ *Iudgement de mort, &c.* By this (&c.) is implied Appeales of Rape, of Arſon or Burning, of Felonie or Larcenie, for therein alſo is iudgement of death, and are within our Authors reaſon.

¶ *Come il ſemble, &c.* It is to be vnderſtood, That firſt a releaſe of all Actions criminall, mortall or concerning Pleas of the Crowne. Secondly, A Releaſe of al Actions generally. Thirdly, A releaſe of al Appeales. And laſtly, a releaſe of all demands are good barres in all theſe kind of Appeales. V.Sect.508.

Sect. 502.

¶ MEs en Appeal d' Mayhem, vn releaſe de touts manners d'actions perſonals eſt bone plee en Barre, pur ceo que en tiel Action il ne recouera forſque damages, &c.

BVt in Appeale of Mayhem a Releaſe of all manner of Actions perſonals is a good plea in Barre, for that in ſuch an Action hee ſhall recouer nothing but dammages.

¶ *Mayhem* Mahemium, membri Mutilatio or Obtruncatio, commeth of the French word Mehaigne, and ſignifieth a Corporall hurt whereby hee looſeth a Member, by reaſon whereof hee is leſſe able to fight; as by putting out his eye, beating out his foretteeth, breaking his ſcull, ſtriking off his arme, hand or finger, cutting off his leg or foot, or whereby he looſeth the vſe of any of his ſaid members. *Mir.ca.1.§.9. Glanv.li.14. ca.7. Bract.li.3.Tract.2.c.2. Brit.fo.48.ca.25. Flet.l. ca.38. Stanf.Pl.Cr.fo.32.* 28.E.3.94. 8.H.4.21.

¶ *Damages, &c.* V.Sect.194.

¶ *Releaſe de touts manners Actions Perſonalls eſt bone Plea, &c.* And the reaſon is, for that euerie Action wherein dammages onely are recouered by the Plaintife, is in Law taken for an Action perſonall. 21.H.6.16.

Sect.

Section 503.

¶ *Briefe de Error.* This writ lieth when a man is grieued by any error in the foundation, proceeding, iudgement or execution, and thereupon it is called Breue de errore corrigendo. But without a iudgement or an award in nature of a iudgment no writ of Error doth lie, for the words of the writ be, Si iudicium redditum sit: and that iudgement must regularly be giuē by iudges of record and in a Court of Record, and and not by any other inferiour Iudges in base Courts, for thereupon a writ of false iudgment doth lie. In this case of Utlawrie vpon Processe the iudgement is giuen (in the Countie Court, which is no Court of Record) by the Coroners, (sauing in London iudgment is giuen by the Recorder, and not by the Maior, who is Cozoner by the Custome of the Citie:) for after the Defendant is Quinto exactus, and maketh default, the iudgement is, Ideo vlagetur per iudicium Coronatorum, and in London, Per iudicium Recordatoris: so as by the Outlawrie the Plaintife recouers nothing, but the King taketh the whole benefit thereof, for the Law did intend, That the Defendant would rather appeare and answer the Plaintife, &c. than to forfeit all his Goods and Chattels, Debts and Duties to the King, by his default and contumacie. But Littleton is to be intended, That the Sherife doe returne the Exigent whereby the Outlawrie appeares of Record, or that the Outlawrie be remoued by Certiorari, for before that time that the Outlawrie appeare of Record, the Defendant doth not forfeit his goods, nor the Plaintife can be disabled, nor any writ of Error doth lie in that case. And this is the cause that the goods of Outlawes cannot be claimed by Prescription, because they are not forfeited vntill the Outlawrie appeare of Record Vid. Sect. 197. where it appeareth by Littleton, That the Plaintife cannot be disabled by Outlawrie, vnlesse it appeareth of Record.

Vi. li 11. fo. 39. 41. in Mortalses case vpon what iudgments and awards a writ of Error doth lie.

Li. 4. fo. 111. Pox's case. Li. 7. fo. 11. 12. Lewis mās case.

15. El. Dyer 317.

Li. 9. fo. 119. 3. Zouches ß.

28. Ass. 49. 12 E. 3. Vlag. 3. 38 E. 3. 13. Mich. 4. & 5. El. Dy. fo. 222. Vi. Sect. 197.

¶ *Car per le dit Action il recouera rien en le personaltie.* Hereupon is to be obserued a diuersitie, when by the writ of Error the Plaintife shall recouer or be restored to any personall thing, as Debt, Dammage, or the like, for then by the reason that Littleton here putteth, the release of all Actions personals is a good plea, for that the Plaintife is to recouer, or to be restored to something in the personaltie. And so likewise when land is to be recouered, or to be restored in a writ of Error, a Release of all Actions reals is a good barre. But where by a writ of Error the Plaintife shall not be restored to any personal or reall thing, there a release of all Actions reall or personall, is no barre, and therefore Littleton here putteth his case with great caution: If a man (saith he) by Processe vppon the Originall bee outlawed, there in deed he shall be restored to nothing in the personaltie against the Plaintife. But where by the Outlawrie he forfeited all his goods and chattels to the King, he shall be restored to them; also therby he shall be restored to the Law, and to be of abilitie to sue, &c. But if the Pl' in a personall Action recouer any debt, &c. or dammages, and be outlawed after iudgment, there in a writ of Error brought by the Defendant vpon the principall iudgement, a release of all Actions personalls is a good plea. And so it is where a Iudgement is giuen in a reall Action, a release of all Actions reals is a good barre in a writ of Error brought thereupon.

1. H. 4. 6.

¶ Item si home soit vtlage en Action personal per proces sur le Original, et port brē Derrour, si celuy a que suit il fuit vtlage, voile pleader enuers luy vn releas ō toutz manners Dactions Personals, ceo semble nul plee, car per le dit Action il ne recouera rien en personaltie forsque tantsolement de reuerser le Utlagarie: mes vn Release de Briefe Derrour est bone plea.

Also if a man bee outlawed in an Action personal by processe vpon the Originall, and bringeth a Writ of Error, if hee at whose suit hee was outlawed will plead against him a Release of all manner of Actions personalls; this seemeth no plea, for by the said action hee shall recouer nothing in the personaltie, but oncly to reuerse the Outlawrie: But a release of the writ of error, is a good plea.

If the Tenant in a reall Action releale to the Defendant after recouery his right in the Land, he shall not haue a Writ of Error, for that he cannot be restored to the Land. 9.H.6.47.

And so it is if debt, &c. or dammages be recouered in a personall action by false Verdict, and the Defendant bring a Writ of Attaint, a (a) releale of all Actions personals is a good barre of the attaint, for thereby the Plaintife is to bee restored to the debt, &c. or dammages which he lost, the like Law is if a Judgement be giuen vpon a false Verdict in a reall Action, a releale of all Actions reals is a good barre in an Attaint. For both the Writ of Error, and the Writ of Attaint doe insue the nature of the former Action, &c. (a) 26.H.8.3.b.13.E.4.1.2. 34.H.6.31.35.H.6.19. 29.Ass.35.47.E.3.6. 24.E.3.37.

And so it is if a Writ of Audita Querela be brought by the Defendant in the former action to discharge himselfe of an execution, a Release of all actions personalls is a good barre, because he is to discharge himselfe of a personall Execution.

¶ *Mes vn release de briefe de error est bone plea, &c.* So as in this speciall case here put by Littleton wherein the Plaintife is to recouer or be restored to nothing against the partie, yet for that the Plaintife in the former Action is priuy to the Record, a release of a Writ of Error to him is sufficient to bar the Plaintife in the Writ of Error of the suit & veration by the Writ of Error. And so note that an Action reall or personall doth imply a recouery of something in the realty or personaltie, or a restitution to the same, but a Writ implyeth neither of them which is worthy of obseruation.

Section 504.

¶ Item, si home recouer debt ou dammages, & il release al defendant touts maners dactions, uncore il puit lotalment suer execution per Capias ad satisfaciendum, ou per Elegit, ou Fieri facias, car execution per tiel briefe ne poit estre dit action.

ALso if a man recouer debt or dammages, and hee releaseth to the defendant all manner of Actions, yet hee may lawfully sue Execution by *Capias ad satisfaciendum*, or by *Elegit*, or *Fieri facias*: For Execution vpon such a Writ cannot bee said an Action.

CHere appeareth a diuersitie betweene an Action and an Execution. For regularly an Action is said in his proper sence to continue vntill iudgement bee giuen, and after Judgement then doth Processe of Execution begin, and therefore a releale of all Actions regularly is (b) no barre of Execution, for the Execution doth beginne when the Action doth end. And therefore the foundation of the first is an originall writ, and doth determine by the Judgement, and writs of Execution are called Iudiciall, because they are grounded vpon the Judgement. *Vide Sect.233.* 8.3.9.4.E.3.*Attorney* 18. 33.H.6.49. 34.H.6.51. (b) 13.H.4.*Release* 53. 19.H.6.3.26.H.6.*Execution* 7.

¶ *Per Cap. ad satisfaciendum.* This is a iudiciall Writ for the taking of the bodie in Execution vntill he hath made satisfaction, where a Capias ad satisfaciendum lyeth at the Common Law, and where it is giuen by Statute, you may reade at large in my Reports. *Sir William Herberts case lib.3.fol.11.12.*

I haue read two ancient Records touching the taking of the body in Execution, whereof to my remembrance, I neuer read any touch in our Bookes, yet will I recite them, and leaue them to the iudicious Reader. William de Walton brought an Action of Trespasse of breaking his Close against Iohn Martin, and vpon not guiltie pleaded, hee was found guiltie and damages assessed, whereupon iudgement was giuen that the Plaintife should recouer his dammages, Et quod prædictus Iohannes capiatur. And the Record saith, Quod prædictus Iohannes venit coram Domino Rege & reddidit se prisone, & quia constat Curiæ per inspectionem corporis ipsius Iohannis, quod idem Iohannes est talis ætatis quod pœnam imprisonamenti subire non potest, ideo dictum est ei, quod eat inde sine die. *Pasch.14.E.3.Rot.106.coram Rege in Thesaur.Swirey.*

The other Record is, That Ellen Allot brought an Appeale of Robbery against Iohn Boskiseleke Clarke, Richard Charta and others who pleaded not guilty, and were not found guilty: whereupon Iudgement was giuen that they should goe quite, Et prædicta Elena pro falso appello suo committatur prisonæ, &c. (for (b) by the Statute she ought to be imprisoned in that case for a yeare.) But the Record saith, Quia eadem Elena prægnans fuit, & in periculo mortis, ipsa dimittitur per manucaptionem, &c. ad habendum corpus vsque Quind. Michaelis &c. *Mich.41.E.3.Rot.27. coram Rege Cornub.in Thesaur.* (b) *W.2.cap.12.*

There be certaine maximes in the Law concerning Executions, as taking ſome in ſtead of many. Ea quæ in Curia noſtra rite acta ſunt, debitæ executioni demandari debent. Parum eſt latam eſſe ſententiam niſi mandetur executioni. Executio iuris non habet iniuriam. Executio eſt fructus & finis legis. Iuris effectus in executione conſiſtit. Proſecutio legis eſt grauis vexatio, executio legis coronat opus. Boni Iudicis eſt iudicium ſine dilatione mandare executioni. Fauorabiliores ſunt executiones alijs proceſſibus quibuſcunque. But now let vs heare what Littleton ſaith.

¶ *Per Elegit* This is alſo a Iudiciall Writ, and is giuen by the Statute either vpon a recouery for debt or dammages, or vpon a Recognizance in any Court. And it is called a Writ of Elegit, for that according to the ſtatute that ſaith, (c) Sit de cæterò in electione illius, &c. ſequi breue quod Vicecomes fieri faciat, &c. vel quod liberet ei, &c. The words of the Writ be Elegit ſibi liberari, &c. And thereupon it is called an Elegit. By this Writ the Sherife ſhall deliuer to the Plaintife, Omnia catalla debitoris, (exceptis bobus & aſris carucæ) & medietatem terræ. And this muſt be done by an inqueſt to be taken by the Sherife.

(c) *W.2 cap.18.*

(d) *11.E.1.Stat.de Acton Burnell. 13.E.1.de mercatoribus. 27.E.3.cap.22. Vide Fleta lib.2.cap.57.25.E 3.53*
(*) *23.H.8.cap.6.*

When Littleton wrote, by force of certaine Acts (d) of Parliament, execution might be had of Lands (beſides by force of the Elegit) vpon Statutes Merchant, Statutes Staple, and Recognizances taken in ſome Court of Record, and ſince he wrote vpon a Recognizance or Bond taken by force of the Statute (*) of 23.H.8 before one of the Chiefe Iuſtices, or the Maior of the Staple, and Recorder of London out of Tearme, which hath the effect of a Statute Staple. The manner of the Executions vpon Bodie, Lands and Goods, appeareth in the Statutes quoted in the margent.

(e) *32.H.8.cap.5.*

Since Littleton wrote a profitable Statute hath beene made (e) concerning executions of Lands, Tenements and Hereditaments, whereby it is prouided that if after ſuch Lands, &c. be had and deliuered in Execution vpon a iuſt or lawfull title, wherewithall the ſaid Lands, &c. were liable, tied, or bound at ſuch time, as they were deliuered or taken into execution, ſhall be recouered, deueſted, taken, or euicted out of, or from the poſſeſſion of any ſuch perſon, &c. before ſuch times, as the ſaid Tenants by Execution their Executors or Aſſignes ſhall haue fully leuied their debt and dammages, for the which the ſaid Lands, &c. were taken in Execution, then euery ſuch Recoueror, Obligee, and Recogniſee, ſhall haue a Scire facias out of the ſame Court from whence the former Execution did proceed, againſt ſuch perſon or perſons as the former Execution was purſued, their heires, Executors or Aſſignes, to haue Execution of other Lands, &c. liable and to be taken in Execution for the reſidue of the debt or dammages. Sed opus eſt interprete.

Lib.4.fol.66. Fulwoods caſe.

Therefore firſt it is to be knowne, that where the Tenant by Execution hath remedie giuen to him by Law after euiction, there the Statute extendeth not to it, for the Act ſaith, by reaſon whereof, the ſaid Recouerors, Obligees and Recognizees, haue beene clearely ſet without remedie, &c. and the bodie referreth to the preamble, and the party ought not to haue double ſatisfaction, one by the former Lawes, and another by this Statute.

And therfore if part of the Land, &c. be euicted from the Tenant by Execution, this Statute extendeth not to it, becauſe he ſhould hold the reſidue, till he be fully ſatisfied, and he muſt be contented if all be euicted ſauing one Acre to hold that, though it bee but a poore remedie: for no new Execution in that caſe hee can haue vpon this Statute. Therefore if the Conuſee hath remedie in præſenti for part, or in futuro for all, or part, this Statute extendeth not to it.

Secondly, If a man be bound to A in a Statute of a thouſand pounds, and by a latter Statute to B. in a hundred pounds, and B. firſt extendeth, and then A. extendeth and taketh the Land from B. yet B. ſhall haue no aide of the Statute, becauſe after the extent of A. B. ſhall re-entioy the Land. by force of his former Execution.

Thirdly, If the wife of the Conuſor recouer Dower againſt the Tenant by Execution, he ſhall hold ouer, and ſhall haue no ayde of this Statute.

Fourthly, If a man put out his Leſſee for yeares, or diſſeiſe his Leſſee for life, and after knowledge a Statute, and Execution is ſued againſt him, and the Leſſee re-enter, the Tenant by Execution after the Leaſes ended, ſhall hold ouer, and haue no aide of this Statute.

Fiftly, This Statute muſt not be taken litterally but according to the meaning, therefore where the letter is vntill hee, &c. or his Aſſignes ſhall fully and wholly haue leuied the whole debt or dammages: if he hath aſſigned ſeuerall parcels to ſeuerall Aſſignes, yet all they ſhall haue the Land, but ſtil the whole debt be paid.

Sixtly, where the words be, for the which the ſaid Lands, &c. were deliuered in Execution. A Diſſeiſor conuey lands to the King who granteth the ſame ouer to A. and his heires to hold by fealtie, and twenty pound rent, and after granteth the Seigniorie to B. B. knowledgeth a Statute,

Statute and Execution is sued of the Seigniory. A. dieth without heire and the Conuse entreth, and is enicted by the Disseisee, he shall haue the aide of this Statute, and yet it is out of the letter of the Law, for the Seigniory was deliuered in Execution and not the tenancy, but he was Tenant by execution of those lands, and therefore within the statute. But the purchase of a Milleine being enicted is out of the statute, for he is Tenant in fee simple thereof and not Tenant by execution.

Seuenthly, where the words be (deliuered and taken in execution) yet if after the Liberate, the Conuse entereth, (as he may) so as the land is neuer deliuered, yet is he within the remedie of this statute, for he is Tenant by execution.

Eightly, where the statute saith, then euery such Recoueror, Obligee, & Recognizee shall, &c. and saith not, their Executors, Administrators or Assignes, but they are omitted in this materiall place, yet by a benigne interpretation, this statute shall extend to them, because they are mentioned in the next precedent clause of the enition, and the remedie must by construction be extended to all the persons, that appeare by the Act to bee grieued, a point worthy the obseruation.

Ninthly, where the Statute giueth a Scire fac' out of the same Court, &c. if the Record be removed by Writ of Error into another Court, and there affirmed, the Tenant by Execution that is enicted shall haue a Scire fac' by the equity of this Statute out of that Court, because the Scire fac' must be grounded vpon the Record, Et sic de similibus.

Tenthly, where the Statute giueth the Scire fac' against such person or persons, &c, that were parties to the first Execution, their Heires. Executors or Assignes, &c. this must not be taken so generally as the Letter is, for if the first Execution were had against a Purchasor, &c. in as nothing was liable in his hands but the Land recouered, if this Land be enicted from Tenant by Execution, no Scire fac' shall be awarded against him, his Heires, Executors or Assignes, but if he hath other lands subiect to the Execution, then a Scire fac' lyeth against him or his Assignes, but not against his Executors, neither in that case can he haue a Scire fac' vpon this Statute against the first Debtor or Recognizor, because it giueth it only against him, &c. that was partie to the first Execution his Heires, Executors or Assignes. But if there be seuerall Assignees of seuerall parcells of lands subiect to the Execution, one Scire fac' vpon this Statute shall lye against all the Assignes. Sed est modus in rebus. This little taste shall giue a light to the diligent reader, not only to see into the secrets of this Statute, but to others also of like nature.

And by the Statute of 23.H.8. it is prouided that the Obligee, &c. shall haue in euery point against such Recognisor, &c. like Proces, Execution, Commodity and aduantage in euery behalfe, as hath beene had or made vpon the Statute staple, and vnder such manner and forme, as is for the same Statute staple prouided: by force of which branch, if the Tenant by execution by force of the act of 23.H.8. be enicted, he shall haue the remedie prouided for Tenants by execution vpon a Statute staple by the Act of 32.H.8. In like manner by force of that clause of 23.H.8. if the extendors vpon a Statute staple, &c. doe extend the lands, &c. at too high a rate, the Obligee may pray, that the Extendors themselues may take the lands, &c. at that rate, &c. by force of the said Statutes of Acton Burnel, and De Mercatoribus. Also no execution shall be sued against the heire within age.

But note that vpon a Writ of Elegit the Plaintife cannot make any such prayer, because those ancient Statutes doe extend to a Statute Merchant or a Statute Staple only, and neither to a Recouery of debt or damages, nor to a Recognizance in Court, and so hath it beene resolued. (f)

Nota, it appeareth by the Preamble of the said Act of 32.H.8. and by diuers (g) bookes, that after a full and perfect execution had by extent returned and of Record, there shall neuer be any re-extent vpon any euiction: but if the extent be insufficient in Law, there may goe out a new Extent.

(h) If a man haue a Iudgement giuen against him for debt or damages, or be bound in a Recognizance and dieth his heire within age, or hauing two daughters, and the one within age no execution shall be sued of the lands by Elegit during the minority, albeit the heire is not specially bound but charged as Terre tenant (i) and so against an heire within age no execution shall be sued vpon a Statute merchant or Staple nor vpon the Obligation or Recognizance vpon the Statute of 23.H.8. for it is excepted in the Proces against the heire. Neither if the heire within age indow his mother shall Execution be sued against her during his minoritie.

Note, that by the Statute (k) of 27.E.3. the execution of Lands vpon a Statute staple is referred to the Statute Merchant, and by the Statute De Mercatoribus no Execution shall be had against the heire, so long as he is within age.

Also since Littleton wrote there is a right profitable Statute (l) made against fraudulent Feoffments, Gifts, Grants, &c. Iudgements and Executions, aswell of Lands and Tene-

40.E 3.26.b. 44.E.3. 2.H.4.17. 15.H 7.15.

(f) Mich 4.& 5. Ph. & Mar. Bendloes, by all the Iustices of the Common pleas. 15.E.3.Extent,7.

(g) 15.E.3.Extent.7. 22.E.3.Recouery in value. 22. 31.E.3.Extents 12. 17.E.3.76. 15.E.3. Scire fac.115. 7.H.4.19. 22.Ass.44. 22.E.3 fo.vlt. 44.E.3.10. 9.H.7.9. 15.H.7.15. 13.Eliz. Dier 299. 29.H.8. Stat. Merchant Br.40.

(h) 11.E.3.age 4. 15.E.3.age 95. 24.E.3.28. 29.Ass.37. 29 E.3 50. 47.Ass.4. 47.E.3.7. lib.3. fo.13. Sir Williams Herberts case. Brooke, age 33.

(i) Tempt E.1. Ass.402.417 16.H.7.6. Lieure dentr.545. Brooke, age 33.

(k) 27.E.3.cap.22.

(l) 13.Eliz.cap.5. Lib.3.fo.80.&c. Twynes case. Lib.5 fo.60. Cowlets case.

Lib.6.fo.18. Pakmans case. Lib.10 fo.56. the Chanc. of Oxfords case. See the statutes of 3.H.7.ca.4. & 32.E.3 ca.6. Mich 12. & 13.Eliz. Dier.295. 18.Eliz.351. Dyer.

ments, as of Goods and Chattels, to delay, hinder or defraud Creditors and others of their full and lawfull Actions, Suites, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Releases, for the expolition of which and other Statutes see the Authorities quoted in the Margent.

And it is to be observed that the words of the said Act of 13.Eliz. are, Be it therefore declared, ordained, and enacted: and therefore like cases in semblable mischiefe shall be taken within the remedie of this Act, by reason of this word (Declared) whereby it appeareth, what the Law was before the making of this Act. But let us now returne to Littleton.

W.2.ca.18.

¶ *Fieri facias.* This is a Writ mentioned in the said Statute, but is a Writ of execution at the Common Law. And is called a Fieri facias, because the words of the Writ directed to the Sheriffe be Quod fieri facias de bonis & catallis, &c. and of those words the Writ taketh his denomination.

But note that a Capias ad satisfaciendum, is not mentioned in the said Statute, because no Capias ad satisfac' did lye at the Common Law vpon a Judgement for debt, &c. or damages, but only when the originall action was Quare vi & armis, &c. But latter Statutes have given a Capias ad satisfac' where debt, &c. or damages are recouered, as it appeareth at large (m) in Sir William Herberts case whereunto I referre the reader.

(m) Lib.3.fo.11. Sir William Herberts case.

And it is to be obserued that these three Writs of execution ought to be sued out within the yeare and the day after iudgement, but if the Plaintife sueth out any of them within the yeare, he may continue the same after the yeare vntill he hath execution. And to none of these Writs of Executions the Defendant can pleade, but if he hath any matter since the iudgement to discharge him of Execution, he may haue an Audita querela, and relieue himselfe that way, but plead he cannot. As if the Plaintife after Release vnto the Defendant all Executions, yet in none of these three Writs he shall pleade it, but is driuen to his Audita querela, as hath beene said.

Sect. 505.

¶ *Scire facias.* This is a iudiciall Writ and properly lyeth after the yeare & day after iudgement giuen, and is so called because the words of the Writ to the Sheriffe be, Quod Scire facias præfat' T. (being the Defendant) Quod sit coram, &c. ostensurus si quid pro se habeat aut dicere sciat, quare, &c. So as by the Writ it appeareth that the Defendant is to be warned to plead any matter in Barre of Execution, and therefore albeit it bee a iudiciall Writ, yet because the Defendant may thereupon plead, this Scire facias is accounted in Law to bee in nature of an action, and therefore (n) a Release of all actions is a good barre of the same, and likewise a Release of Executions is a good barre in a Scire facias, this Writ was gi-

(n) 19.H.6.3. 18.E.4.7.

¶ Mes si apres lan et iour le plaintife voit suer vn Scire facias, a sacher si le defendant voit rien dire pur que le plaintife nauera execution, donques il semble que tiel releas de touts actions serra bon plee en barr: Mes aleuns ont semble contrary, entant que le briefe de Scire facias est vn bre dexecution, & est dauer executiõ, &c. Mes vncore entant que sur ñ le briefe le defendant poit pleader diuers matters puis le iudgement rendue de luy ouster dexecution, come vt lagary, &c. et diuers auters matters,

But if after the yeare and day the plaintife will sue a *Scire facias*, to know if the defendant can say any thing why the plaintife should not haue execution, then it seemeth that such release of all actions shall be a good plea in barre. But to some seemes the contrary, in as much as the writ of *Scire facias* as is a writ of execution, and is to haue execution &c. But yet in asmuch as vpon the same writ the Defendant may plead diuers matters after iudgement giuen to oust him of execution, as outlawry, &c. and diuers other matters, this

matters, ceo bien poit eſtre dit action, &c. may bee well ſaid an action, &c.

W.2 cap.45. 8.E.3.297.298 18.E.3.33. lib.3.fol.12. Sir William Herberts caſe. Fleta, lib.2.cap.12.

then in this caſe by the Statute of W.2. for at the Common Lawe if the Plaintife had ſurceaſed to ſue Execution by Fieri facias, or Leuari facias a yeare and a day, he had beene driuen to his new originall.

¶ *Ceo bien poet eſte dit action.* Here it is to be obſerued that euery plea wherevnto the Defendant may pleade, be it originall or iuditiall is in Lawe an action.

Sect.506.

¶ Et ieo croy, que en vn Scire facias hors dun fine, vn releas de touts maners dactions, eſt bon plee en barre,

And I take that in a *Scire facias* vpon a fine, a releaſe of all manner of actions is a good plea in barre.

This vpon that which hath beene ſaid is euident of it ſelfe.

Sect. 507.

¶ Mes lou home recouera debt ou damages, et eſt accord perenter eux, que le plaintife ne ſuet execution, donqs il couient q̄ le plaintife fait vn releas a luy de touts maners dexecutions.

But where a man recouereth debt or damages, and it is agreed betweene them that the plaintife ſhall not ſue execution, then it behoueth that the plaintife make a releaſe to him of all manner of executions.

¶ *Il couient.* Albeit Littleton here ſaith, hee ought or muſt, &c. yet there bee other words which will releaſe an Execution without expreſſe words of a releaſe of Execution.

19.H.6.4. 26.H.6. Execution 4. lib.8.fo.153. Kelyhame caſe. Vid. Brooke, tit. Releaſes 87.

As if a man releaſe all ſuites the Execution is gone, for no man can haue Execution without prayer and ſuit, but the King only, and therefore if the King releaſeth all ſuites, it is no barre of his Execution becauſe in the Kings caſe the Iudges ought to award execution Ex officio without any ſuite, but a releaſe of Executions doth barre the King in that caſe. And ſo note a diuerſity betweene a releaſe of all actions, and a releaſe of all ſuites.

26.H.6.tit.Execution,7.

So if the body of a man be taken in Execution, and the Plaintife releaſeth all actions, yet ſhall he remaine in Execution, but if he releaſe all debts or duties he is to be diſcharged of the Execution becauſe the debt or dutie it ſelfe is diſcharged.

20.Aſſ.p.7.

In the ſame manner if Execution be ſued vpon a Recognizance by Elegit, and the Conuſee by Deed make a Defeaſance, that if the Conuſor doth ſuch an act, that then the Recognizance ſhall be voide, by this the Execution is diſcharged.

26.H.6.vbi ſupra.

So it is if iudgement be giuen in an action of debt, and the body of the Defendant is taken in execution by a Capias ad ſatisfac' and after the Plaintife releaſeth the Iudgement, by this the body ſhall be diſcharged of the Execution.

If the Plaintife after Iudgement releaſe all demands the Execution is diſcharged, as ſhall appeare by that which next hereafter ſhall be ſaid.

20.H.6.6. per Paſton.

If A. be accountable to B, and B. releaſeth him all his duties, this is no barre in an Action of account, for Duties extend to things certaine, and what ſhall fall out vpon the account is incertaine; and albeit the Latyn word is Debita, yet Duties doe extend to all things due that is certaine, and therefore diſchargeth Iudgements in perſonall actions, and Executions alſo.

Section 508.

¶ *Touts manners de demands.*

¶ *Demande*, Demandum is a word of Art, and in the understanding of the Common Law is of so large an extent, as no other one word in the Law is, vnlesse it be Clameum, whereof Littleton maketh mention Sect.445. And here is to bee obserued, that there bee two kind of demands or claimes, viz. a demand or claime in Deed, and a demand or claime in Law, or an expresse, and an implied demand or claime. Littleton here putteth examples of both, and first he speaketh of Reall Actions, wherein hee that bringeth his Action maketh his demand, and therefore he is properly called a demandant, and hee that defendeth is called Tenant, because he is Tenant of the Freehold of the land.

Lit. Sect.445. Tract.li.1. ca.10. Pl.Com. Stokes case, 359, &c.

Of demands implied, or in Law, Littleton putteth examples: First, Of all Actions personalls. Secondly, Of Appeales, for in both those cases he that bringeth the suit is called Plaintife, and not Demandant, and he that defendeth is called Defendant. Thirdly, Of Executions. Fourthly, Of title or right of Entrie, either by force of a Condition, or by any such right, which meerly is a demand or claime in Law, but otherwise it is in the Kings case. Fiftly, Of a Rent seruice, Rent charge, Common of pasture, &c. which also are meere demands or claimes in Law. All which, Littleton here and in the two next Sections following, putteth but for examples, for by the release of all demands other things also be released, as Rents seck, all mixt Actions, a Warrantie which is a Couenant reall, and all other Couenants reall and personall, Estouers, all manner of Commons and profits appender, Conditions before they be broken or performed, or after, Annuities, Recognisances, Statutes Merchant or of the Staple, Obligations, Contracts, &c. are released and discharged.

38.H.8.tit. Releases Br.9. 6.H.7.15. 19.H.6.3,4. 20. Ass.Pl.5. 40.E.3.22.49.E.3 7.b.50. Ass pl.6.14.H.4.8. 13.R.2.tit.Anow.89.Lib.8. fo 153. Ed. Altham case. Lit.170.Sect.748.Dyer 5. El.217.

¶ Item si hõe release a vn auter touts manners de demands, ceo est le plus meilior release a luy a que le Release est fait que il poet auer, et plus vera a son aduantage. Car per tiel release de touts manners de demands, touts maners dactions reals, personals, et Actiõs dappeale sont ales et extincts, et touts manners de executions sont ales et extincts.

ALso if a man release to another all manner of demãds, this is the best release to him to whome the Release is made, that he can haue, and shall enure most to his aduantage. For by such release of all manner of demands, al manner of Actions realls, personalls, and Actions of Appeale, are taken away and extinct, and all manner of executions are taken away and extinct.

Sect. 509.

¶ Et si hõe ad title de entry en aſcuns terres ou tenements, per tiel Release son title est ale.

¶ Sed quære de hoc, car Fitz-Iames chiefe Iustice de Engleterre tient le contrarie, pur ceo que entre ne poit proprement estre dit demande, P.19.H.8.*

ANd if a man hath title of entry into any Lands or Tenements by such a Release, his title is taken away.

¶ *Sed quære de hoc*, for *Fitz-Iames* chiefe Iustice of England holdeth the contrarie, because an Entrie cannot be properly sayd, a Demaund.

¶ *Title.*

¶ *Title.* Here Title is taken in the largeſt ſence, including Right alſo. 34.H.8.tit.Releaſ.B.9. Chauncys caſe. Lib.8. fo.153. Ed. Altham caſe.

¶* Sed quære,&c. This is an addition, and no part of Littleton, and the opinion here cited clearely againſt Law.

Section 510.

¶ Et ſi home ad Rent ſeruice ou Rent charge, ou Common de Paſture,&c. per tiel releaſe de touts manners de demaunds fait al Tenaunts de la Terre, dont le ſeruice ou le rent eſt iſſuant, ou en que le Common eſt, le ſeruice, le Rent, et le Common eſt ale et extinct, &c.

And if a man hath a Rent ſeruice or Rent charge, or Common of Paſture,&c. by ſuch a Releaſe of all manner of demaunds made to the Tenants of the Land out of which the ſeruice or the rent is iſſuing, or in which the Common is, the ſeruice, the Rent and the Common, is taken away and extinct.

This vpon that which hath beene ſayd, needeth no further explication.

Sect. 511.

¶ Item ſi home releſſa a vn aut touts manners de quarrels, ou touts controuerſies ou debates enter eux, &c. Quære a quel matter et a quel effect tiels parols ſoy extendont, &c.

Alſo if a man releaſeth to another all manner of quarrels, or all controuerſies or debates betweene them, &c. *Quære* to what matter and to what effect ſuch words ſhall extend themſelues.

¶ *Quarrels.* Querela, à querendo, this properly concerneth Perſonall Actions, or mixt at the higheſt, for the Plaintife in them is called Querens, and in moſt of the writs it is ſaid Queritur. And yet if a man releaſe all Quereles (a mans deed being taken moſt ſtrongly againſt himſelf) it is as beneficiall as al actions, for by it al Actions reall and perſonal are releaſed. And by the releaſe of all quarrels, all cauſes of Actions are releaſed thereby, albeit no Action be then depending for the ſame. 40.E.2.47.b.Ed.Altham Caſe vbi ſupra. 35.H.8.Dier.57. 9.E.4.44. 39.H.6.9.

¶ *Quarels*, Controuerſies, and Debates, are Synonima, and of one ſignification. Litis nomen omnē Actionē ſignificat, ſiue in rem, ſiue in perſonā ſit. If a man releaſe omnes loquelas, it is as large as omnes Actiones, for omnis Actio eſt loquela, and it extendeth as well to Actions in Courts of Record, as baſe Courts, for the writ of Error ſayth, In Recordo & Proceſſu, &c. loquelæ quæ fuit inter, &c. and ſo the writ of falſe Judgement ſayth, Recordari facias loquelam, where the Iudgement was giuen in the Countie Court. Omnes exactiones, ſeem to be large words, for Exactio deriuantur ab exigendo, and Exigere ſignifieth, to require or demand. *Lib.8 fol.153. Altham Caſe* 21.H.6.16.a.F.N.B.23.18. 50.Aſſ.6. 40.E.3.22. 13.R.2.Annuity 89.

Sect. 512.

¶ Item ſi home p ſon fait ſoit oblige a vn auter en

Alſo if a man by his Deed bee bound to another in a

¶ *Releſſa al obligor touts Actions, &c.* The reaſon

of

11.H.4.41.43.

of this case is, For that the debt is a thing consisting meerely in Action, and therefore albeit no Action lieth for the debt, because it is debitum in præsenti, quamuis sit soluendum in futuro, yet because the right of Action is in him, the release of all Actions is a discharge of the debt it selfe. (o) And so may an Executor before probate release an Action, and yet before Probate he can haue no Action, because the right of the Action is in him, and so it was adiudged. And some say, that an Ordinarie may release an Action, and yet he can haue none. But if a man by Deed doth couenant to build an house or make an estate, and before the Couenant broken, the Couenantee releaseth to him all Actions, Suits, and Querrels, this doth not discharge the Couenant it selfe, because at the time of the Release, nihil fuit debitum, there was no debt or dutie, or cause of Action in being. But in that case a Release of all Couenants is a good discharge of the couenant before it be broken.

(o) Trin 2.Ia.in Cõi Banco. inter Middleton & Rinnet. 18.H.6.23.b.Pl.Com.277. 278. In Greisbrokes Case per Weston.

5.Eliz. Dier 217.

Altham's Case vbi supra.

certaine ſumme de money a payer al Feaſt de S. Michael prochein enſuant, a l'obligee deuant le dit Feaſt releſſa al Obligor touts Actions il ſerra barre del dutie a touts temps, et vncore il ne puiſſoit auer Action al temps de Releaſe fait.

certaine ſumme of money, to pay at the Feaſt of Saint *Michael* next enſuing, if the Obligee before the ſayd Feaſt releaſe to the Obligor all Actions, hee ſhall be barred of the duty for euer, & yet he could not haue an Action at the time of the Releaſe made.

Sect. 513.

7.H.7.5.a.

45.E.3.8.17.H.6.26. 13.H.4.Auowrie 240.

30.E.3.13.b. 47.E.3.24.

10.E.2.Execution 137. 16.E.2.ibid.138. 16.E.3. Seire Fac.4.F.N.B.267. 9.E.3.7.

5.Mar.Actions sur le case. Br.108. 3.Mar.Dier.113. Lib.4.fo.94.Slades case. Lib.5.fol.81.b. Fordes case.

39.H.6.28.b. 5.E.4.45. 2.H.4.13.92.R.2.Release 29

CREleaſe touts Actions. This releaſe ſhall not barre the Leſſor of his Rent becauſe it was neither debitum nor ſoluendum at the time of the releaſe made, for if the land be euicted from the Leſſee before the Rent become due the Rent is auoyded, for it is to bee paid out of the profits of the land, and it is a thing not meerely in action becauſe it may bee granted ouer. But the Leſſor before the day may acquite or releaſe the Rent. But if a man bee bound in a Bond or by Contract to another to pay a hundred pounds at fiue ſeuerall dayes, he ſhall not haue an Action of Debt before the laſt day be paſt, and ſo note a diuerſitie betweene duties which touch the realtie, and the meere perſonaltie. But if a man be bound in a Recognizance to pay a hundred pound at fiue ſeuerall dayes preſently after the firſt day of payment he ſhall haue execution vpon the Recognizance for that ſumme, and ſhall not tarrie till the laſt be paſt, for that it is in the nature of ſeuerall Judgements. And ſo note a diuerſity betweene a debt due by Recognizance, and a debt due by Bond or Contract. And ſo it is of a couenant or promiſe, after the firſt default an Action of Couenant, or an Action vpon the Caſe doth lie, for they are ſeuerall in their nature. Laſtly, note a diuerſity betweene Debts and Couenants, or Promiſes.

CMes ſi home leſſa terre a vn auter pur terme dun an, rendant a luy al feaſt ô S. Mich. prochein enſuãt 40. s. & puis deuãt meſm̃ le feaſt il releſſa al leſſee touts actions vnc̃ apres meſme le feaſt il auera acc̃ de Det pur non payment de les 40. s. nient obſtant le dit releas. Stude cauſam diuerſitatis enter les deux caſes.

BVt if a man letteth land to another for a yeare, to yeeld to him at the Feaſt of S. *Mich.* next inſuing 40. s. & afterwards before the ſame Feaſt hee releaſeth to the leſſee all actions, yet after the ſame Feaſt hee ſhall haue an action of debt for the non payment of the 40. s. notwithſtanding the ſaid Releaſe. *Stude cauſam diuerſitatis* between theſe two caſes.

If a man hath an Annuity for tearme of yeares, or for life, or in fee, and he before it be behind doth releaſe all Actions, this ſhall not releaſe the Annuity, for it is not meerely in Action, becauſe it may be granted ouer.

Sect.

Section 514.

Item ou home voile ſuer briefe de Droit, il couient que il counta del ſeiſin de luy, ou de ſes anceſtors, & auxy q̄ ſeiſin fuit en temps de meſme le Roy come il counta en ſon count: Car ceſt vn ancient ley ble, come appiert per le Report dun plee en le Eire de Nottingham, titulo Droit en Fitzherbert, cap. 26. en tiel forme q̄ enſuiſt. John Barre port ſon briefe de Droit enuers Reynold de Aſſington, et demaunda certaine tenements, &c. ou le miſe eſt ioyne en le bank, et originall & le Proces fueront demandes devant Juſtices errāts, ou les parties viendront, & les 12. Chiualers ſeront lour ſerement ſans challenge des parties deſtre alowes, pur ceo que election fuit fait per aſſent des parties, oue les quater Chiualers, & le ſerement fuit tiel, Que ieo verity dirr̄, &c. le quel R. de A. ad plus mere droit a tener les tenements que John Barre demanda vers luy per ſon briefe de Droit, ou John, de

ALſo where a man will ſue a Writ of Right, it behoueth that he counteth of the ſeiſin of himſelfe or of his anceſtors, and alſo that the ſeiſin was in the ſame Kings time, as hee pleadeth in his plea. For this is an ancient Law vſed, as appeareth by the report of a Plea in the Eire of *Nottingham*, *tit. droit in Fitzherbert*, *cap.* 26. in this forme following. *John Barre* brought his Writ of Right againſt *Reynold* of *Aſſington*, and demanded certaine Lands, &c. where the miſe is ioyned in banke, and the originall and the Proceſſe were ſent before the Iuſtices errants, where the parties came, and the twelue Knights were ſworne without challenge of the parties, to bee allowed, becauſe that choiſe was made by aſſent of the parties, with the foure Knights, and the Oath was this. That I ſhall ſay the truth, &c. whither *R.* of *A.* hath more mere right to hold the tenements which *Iohn Barre* demandeth againſt him by his Writ of Right, or *Iohn* to haue

¶ *IL couient que il counta del ſeiſin de luy ou de ſes anceſtors.* For if neither hee nor any of his Anceſtors were ſeiſed of the land, &c. within the time of limitation, hee cannot maintaine a writ of Right, for the ſeiſin of him of whom the Demaundant himſelfe purchaſed the land, &c. auayleth not.

For the time of limitation. See the Statute of 32. *H.* 8. *cap. Vide Sect.* 170.

And ſo it is in a writ of Right of Advowſon.

F.N.B. 30. *a.* 2. *E.* 3. 27. *Littl.* 112. 2.

¶ *Auxy que le ſeiſin fuit en temps de meſme le roy come il counta.* Hereby it appeareth, that not only a ſeiſin (as hath bin ſaid) is requiſite, but alſo that the ſeiſin be had in the time of the ſame king according to his Count.

¶ *Report* commeth of the Latin word reportare, à re, & porto, id eſt, referre, à re, & fero. And in the Common Law, it ſignifieth a publike relation, or a bringing againe to memory Caſes iudicially argued, debated, reſolued, or adiudged in any of the Kings Courts of Iuſtice, together with ſuch cauſes and reaſons as were deliuered by the Iudges of the ſame, and in this ſence Littleton vſeth the word in this place.

¶ *En le Eire de Nottingham.* Eire, Iter. And it ſignifieth the Court of the Iuſtices in Eire, and thereupon they were called Iuſticiarij Itinerantes, in reſpect that the Iuſtices reſiding at Weſt-

(p) Mirror cap.2.§.3. & §.15. & cap.4. le office des Justices in Eire. Glanuil. lib.9. cap.11. lib.8. cap. primo. Britton fol.1.b.7.8. &c Bract. lib.3. fol.115. &c Fleta lib.1. cap.15. &c. 4.E.3.32.6.E.3.35.23.E.3.21.15.H.7.5. Vide Sect.442.233.234.

westminster were called Iusticiarij residentes, and were much like in this respect to the Iustices of Assise at this day, although for authoritie & manner of proceeding (whereof you shall read (p) in the ancient Authors of the Law) farre different. And as the power of the Iustices of Assises by many Acts of Parliament, and other Commissions increased, so these Iustices Itinerant by little and little vanished away. And it is certaine, that the authority of Iustices of Assises Itinerant through the whole Realme, and the Institution of Iustices of Peace in euery Countie being duly performed, are the most excellent meanes for the preseruation of the Kings peace and quiet of the Realme of any other in the Christian world.

¶ *De Nottingham.* This should bee Northampton according to the Originall.

This report whereof Littleton here maketh mention, you shall finde an Abstract of it in 3.E.3. since Littletons time put in print by Fitzherbert when he was Seriant in 11 H.8. and is not in the Reports or Bookes at large. And yet here it appeareth, that they be of great authoritie, and vouched by Littleton himselfe for the proofe of a mayne point in Law. And hereby it also appeareth how necessary it is to read Records and Pleas reported or recorded, though they were neuer printed. For those and the like Records are Veritatis & Vetustatis vestigia.

3.E.3. Tit. Droit F.26.

¶ *Tit. droit in* Fitzherbert 26. is

auer eux, sicome il demaund, & pur rien dirra que le verity ne dirra, sicome moy ayde Dieu, &c. sans dire a lour escient. Et tiel serement serra fait en attaint, et en Battaile, & en ley gager, car eux miteont chescun chose a fine. Wes John Barre counta ôl seisin dun Rafe son ancester, en temps le Roy Henry, & Reynolde sur le mise ioyne tendist demy mark pur le temps &c. Et sur ceo Herle Iustice dit al grand assise, apres ceo que ils fuerent charges sur le mere Droit. Vous gentes, Reynold donast demy marke al Roy pur le temps, al entent que si vous troues q̃ launcester John ne fuit pas seisie en le temps que le demaundant ad count, vous nenquires plus auant del droit, et p̃ ceo vous nous dires, k̃ quel laũcester John, Rafe per noisme, fuit seisie en temps le Roy Henry, come il ad count, ou non. Et si vous troues que il ne fuit seisie en cel temps, vous nenquires nient pluis, & si vous troues que il fuit seisie, donques enquires ouster del briefe. Et puis le graund

them as he demandeth and for nothing to let, to say the truth, so helpe mee God, &c. without saying to their knowledge. And the like oath shall bee made in an Attaint and in battaile, and in wager of Law, for these doe bring euery thing to an end. But *Iohn Barre* counted of the seisin of one *Ralfe* his Ancestor in the time of K. *Henry*, and *Reynold* vpon the mise ioyned tendred halfe a marke for the time, &c. And hereupon *Herle* Iustice said to the grãd assise afterthat they were charged vpon the meere right. You good men, *Reynold* gaue halfe a Marke to the King for the time, to the intent that if you find that the Ancestor of *Iohn* was not seised in the time that the demãdant hath pleaded, you shall enquire no further vpõ the right, and for this, you shall tell vs whether the Ancestor of *Iohn*, (*Ralfe* by name) were seised in K. *Henries* time as he hath pleaded, or not. And if you find that he was not seised in this time you shall enquire no more, and if you find that he was seised, then you shall enquire further of the writ. And after the grand Assise came in with their

graund Assise reuiendroit oue lour verdict, & disont que Rafe ne fuit pas seisie ẽ temps le Roy H. per que fuit agard, que Reynold tiendroit les tenements vers luy demandes, a luy & ses heires quites de John Barre & ses heires a remnant. Et John en le mercie, &c. Et le cause pur que ieo aye monstre icy a toy mon fits cest plee, est pur prouer le matter precedent q̃ est dit en briefe de Droit, &c. car il semble per cest plee, que si Reinold nauoit pas tendue ỏmy mark pur enquirer ỏl temps, &c. donques le graund Assise duissoit estre charg̃ tantsolement ỏl mere droit, & nemy del possession, &c. Et issint q̃touts foits en briefe de Droit, si le possession dont le demandant counta soit en temps le Roy, com̃ il auoit cõũt, donques le charge del grande assise serra tãtsolement sur le mere droit, coment que le possession fuit encounter le ley, come il est dit deuant en cest Chapter, &c.

verdict, and said, that *Ralfe* was not seised in the time of King *Henrie*, whereby it was awarded that *Reynold* should hold the Tenements demanded against him, to him and his heires quite of *Iohn Barre* and his heires to the remnant. And *Iohn* in mercie, &c. And the reason why I I haue shewd to thee my Sonne this Plea, is, to proue the matter precedent which is said in a Writ of right, for it seemeth by this Plea, that if *Reynold* had not tendred the halfe marke to enquire of the time, &c. then the grand Assise ought to be charged only to enquire of the meere right, and not of the possession, &c. And so alwayes in a Writ of Right if the possession whereof the demandant counteth bee in the Kings time as hee hath pleaded, then the charge of the grand Assiise shall be only vpon the meere right, although that the possession were against the Law, as it is said before in this Chapter. &c.

of a new addition, and therefore though it bee true, yet not to bee allowed.

¶ *Et le originall & le proces fuer' demande deuant Iustices Itinerants.* For it is to bee vnderstood, that all Pleas either in the realtie or personaltie that were begunne and not determined before Justices in Eire were adiourned by them into the Court of Comon Pleas.

4.E.3.41. Pownels case. Mirror Glanvil Bracton Britton Fleta vbi supra.

¶ *Les 12. chiualers fieront lour ſerement ſauns challenge, &c. pur ceo que le election fuit fait per aſſent des parties one les 4. chiualers.*

Here are foure things to be obserued.

First, That omnis consẽsus tollit errorẽ, and against his own consent hee cannot challenge the twelue.

30.E.1.tit.challenge 172. 21.E.4.77.39.E.3.1.44.E.3.6.11.H.6.13.

Secondly, That the foure Knights Electors of the grand Assise are not to be challenged, for that in Law they bee Iudges to that purpose, and Iudges or Iustices cannot bee challenged. And that is the reason that Noblemen that in case of high Treason are to passe vpon a Peere of the Realme cannot be challenged, because they are Iudges of the fact, and the Magna Charta saith, per iudicium parum suorum.

4.E.3.13.

Magna Charta cap.29.

Thirdly, That the twelue before any assent may be challenged before the foure Knights Electors, but after assent or returne of the pannell before the Justices there shall be no challenge to the pannell nor to the polles.

39.E.3.2.7.H.4.20.

7.H.4.20.

Fourthly, If there be not foure Knights for Electors in that Countie, the next to them in that Countie shall be taken. Ne curia Regis deficeret in iustitia exhibenda.

¶ *Sauns dire a lour escient.* And here it appeareth, that where the iudgement is finall, there the Oath of the grand Assise or Jury is absolute and not to their knowledge,

knowledge, as here in the Writ of Right, in the Attaint, and in Wager of Law, for the iudgement in euery of these three is finall.

Vid.Sect.193. Kegist.new.

¶ *Le mise est ioyne.* Mise is a word of art appropriated only to a Writ of Right, so called because both parties haue put themselues vpon the meere right to be tryed by grand Assise or by battle: so as that, which in all other Actions is called an Issue, in a Writ of Right in that case is called a Mise. And in this sence Littleton taketh it here. But in a Writ of Right if a Collaterall point is to be tryed, there it is called an Issue: and is deriued of this word (Missum) because the whole cause is put vpon this point. It is also taken for expences, as Misæ & Custagia. And sometime it signifieth a customary grant to the King or Lords Marchers of wales by their Tenants at their first comming to their Lands.

33.H.8.ca.13. 3.E.6.ca.36.

10.E.3.20. 31.E.3.droit 11 22.E.3.17. 18.H.3.droit.62. 33.E.3.ibid.39. Lamb.explicat.verborum verbo Mancusa.

¶ *Tender di marke al Roy.* Master Lambard saith that Mancusa & Marca Saxonice Mancup.7. Mearc' Nummus 30. valens denarios. And this Mearc now called a Marke being an old Saxon word is the cause that England most commonly reckoned by Markes, Libra Saxonice is a pund, a pondo, which is called so vntill this day. Solidus qui apud nos est pars libræ vicesima, denarios per id temporis continebat quinque, nunc duodecim, and Scilling is a Saxon word, and with vs vsed to this day. Penny Saxonice pennig, Latyne Denarius, but the value of these haue not beene alwayes one.

F.N.B.31.c. 31.E.3.droit. 15.6.E.3.ibid.24.

In a Writ of Right of Aduowson brought by the King, the Tenant shall not tender the Di.marke, because Nullum tempus occurrit Regi, and therefore the King shall alleage, that he or his Progenitor was seised without shewing any time.

Mirror,ca.1.§.17.ca.3. de Attaint.ca.5.§.1. Bracton.fo.288.289.&c.292. Britt.fo.241.245.246.&c. Fleta.lib.5.ca.21.& 34. Fortescue,ca.26.

¶ *En attaint.* Attincta, is a Writ that lyeth where a false Verdict in Court of Record vpon an issue ioyned by the parties is giuen. And of ancient writers it is called Breue de conuictione. And is deriued of the principle Tinctus, or Attinctus, for that if the petite Jury be attainted of a false oath, they are stayned with periurie, and become infamous for euer, for the iudgement at the Common Law in the Attaint importeth eight great and grieuous punishments. 1. Quod amittat liberam legem imperpetuum, that is, he shall bee so infamous as shall neuer be receiued to be a witnesse or of any Jury. 2. Quod confiscetur omnia bona & catalla sua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod vxores & liberi extra domus suas eijcerentur. 5. Quod domus suæ prostrentur. 6. Quod arbores suæ extirpentur. 7. Quod prata sua arentur, Et 8. Quod corpora sua carceri mancipentur. So odious is periury in this case in the eye of the Common Law, and the seuerity of this punishment is to this end, Vt pœna ad paucos, metus ad omnes perueniat, for there is Misericordia puniens, and there is Crudelitas parcens. And seeing all trialls of reall, personall and mixt actions depend vpon the oath of 12. men, prudent Antiquity inflicted a strange and seuere punishment vpon them if they were attainted of periury.

But since Littleton wrote a Statute hath beene made in mittigation of the seuerity of the Common Law in case when the petite Jurye is attainted, and therefore it is taken by equitye. For where the Statute saith, that the party grieued shall haue an Attaint against the party which shall haue iudgement vpon the Verdict, yet an Attaint shall be maintained vpon that Statute against the Executors of the partie, Et sic de similibus. (a) But see the Statute and Authorityes quoted in the Margent. Only I thought good to obserue three things.

(a) 23.H.8.ca.3. 3.Eliz.Dier.201. 7.E.6.ibidem.81. 3.Mar.ibid.129. 7.Eliz.ibid.235. 24.H.8.Br.Attaint 96. 4 Mar ibid 127. 20.H.7.5. 42.E.3.26.F.N.B.107.D.

Firſt, that no Attaint can be maintained vpon this Statute but betweene party and party.

Secondly, that no Conusance can be granted vpon any Attaint, because all Attaints are to be taken eyther before the King in his bench, or before the Justices of the Common place, and in no other Courts, &c.

Thirdly, consider what pleas may be pleaded in an Attaint by force of this Act, and what not.

Mirror.ca.1.§.3.ca.3.§. ca.5 §.1. Bracton,lib.3. 141.b. & fo.320.331. Glanuil. lib.2.cap.3.4.5. Lib.8.ca.9. Lib 4.ca.1. Britt.fo.40.42.43.81. 175.190. Fleta lib.1.ca.32. & lib.2.ca.48. (b) 4.E.3.41. 17.E.3. 19.H.6.35. 1.H.4.3. 30.E.3.20. 29.E.3.12. 13.H.4.4. Stanf.174.178. 17 Eliz.Dier 9.E.4.35. 1.H.6.6. 3.H.6.55. Vid.lib.9 fo.32.b.& 33.b.

¶ *En battaile.* Duellum, Monomachia, And it signifieth in the Common Law a tryall by single fight, by battaile or combate, Monomachia. (b) And in the Writ of Right neither the Tenant or Demandant shall fight for themselues, but finde a Champion to fight for them: because if either the Demandant or Tenant should be slayne, no iudgement could be giuen for the Lands or Tenements in question. But in an Appeale the Defendant shall fight for himselfe, & so shall the Plaintife also, for there if the Defendant be slayne, the Plaintife hath the effect of his suite, that is the death of the Defendant; the order and solemnity whereof you may reade in our ancient and latter Bookes. And this the Law did institute, when the Tenant failed of his Witnesses, or Euidences, or other proofes, and the presumption of Law is, that God will giue victory to him that hath right.

Mirror.ca.4. De office des Iustices, &c. Glanuil lib.1.ca 9.lib.8.ca.8.

¶ *Ley gager.* Vadiare legem, And there is also Facere legem, by making of his Law. That is to take an oath (for example) that he oweth not the debt demanded of him vpon a simple Contract, nor any penny thereof. And it is called wager of Law,

Law, because of ancient time he put in surety to make his Law at such a day, and it is called making of his Law, because the Law doth giue such a speciall benefit to the Defendant to barre the Plaintife for euer in that case. (1) But he ought to bring with him eleuen persons of his neighbours that will auow vpon their oath, that in their consciences he saith truth, so as he himselfe must be sworne De fidelitate, and the eleuen De credulitate.

Lib.10.ca 5. Bracton,lib.3. tract.2.ca.37. & lib.5 fo.410. Britton,fo.56. Fleta lib.2.ca.56.63.

(1) *Magna Carta,ca.28. Bracton.lib.5.fo.410. Fleta,lib.2.ca.63. Diuersities des Courts, 33.H.6.8.*

And wager of Law lyeth not when there is a specialty, or Deed to charge the Defendant, but when it groweth by word, so as he may pay or satisfie the party in secret, whereof the Defendant hauing no testimony of witnesses may wage his Law, and thereby the Plaintife is perpetually barred, as Littleton here saith, for the Law presumeth that no man will forsweare himselfe for any worldly thing, but mens consciences doe grow so large (specially in this case passing without impunitie) as they chose rather to bring an Action vpon his case vpon his promise, wherein (because it is Trespasse sur le case) he cannot wage his Law, then an Action of debt.

A man Outlawed or attainted in an Attaint, or vpon an inditement of conspiracie, or of periury, or otherwise whereby he become infamous shall not wage his Law. *33.H.6.32.*

A man vnder the age of 21. yeares shall not wage his Law, but a Feme couert together with her husband shall wage her Law. *11.H.6.40. 15.E.4.2.*

When the suite is for the King, or for his benefit, as in a Quo minus, the Defendant shall not wage his Law. *32.H.6.24. 8.H.5.Ley 66. 35.H.8.Ley.Br.102.*

If an Infant be Plaintife the defendant shall not wage his Law. An Alien shall wage his Law in that language he can speake. *26.E.3.63.b. 21.H.6.42.*

In no case where a Contempt, trespasse, disceite, or iniurie is supposed in the defendant, he shall wage his Law, because the Law will not trust him with an oath to discharge himselfe in those cases, only in some cases in Dett, Detinue, Accompt, the Defendant is allowed by Law to wage his Law. *44.E.3.32. 18.E.3.4. 24.E.3.39.*

In an Action of Account against a Receiuor vpon a receipt of money by the hand of another person for account render (vnlesse it be by the hands of his wife, or of his Commoigne) the Defendant shall not wage his Law, because the receipt is the ground of the Action which hath not in priuity betweene the Plaintife and Defendant, but in the notice of a third person, and such a receipt is trauersable. (d) But in an Action of debt vpon an Arbitrament, or in an Action of Detinue by the bailement of anothers hand, the Defendant shall wage his Law, because the Debet and the Detinet is the ground of those actions, and the Contract or Bailement though it be by another hand, is but the conueyance and not trauersable. In an action of Accounnt against a Bailife of a Mannor, the Defendant cannot wage his Law because it soundeth in the realty. In an action of Debt which concernes the realty, as for Debt, Rent vpon a Lease for yeares, or an action of Detinue for detayning an Indowment of a Lease for yeares, the Defendant shall not wage his Law, much lesse for Charters or Deeds which concerne inheritance. *15.E.4.16. 10.E.4.5.*

(d) *33.H.6.24. 13.H.7.3.a. 22.H.6.41. 1.H.6.1.b. 8.H.6.11. 18.H.8.3. 3.E.3.28. 11.H.4.54. 5.H.5.13. 21.H.6.30. 24.E.3.Ley 63. 30 E.3.19. 9.E.4.1.*

34.H.8.Ley Gager Br.97.

In an action of Debt for a Fine or Amerciament in a Leete, the Defendant shall not wage his Law, because the Leete is a Court of Record, but in an action of Debt for an Amerciament in a Court Baron the Defendant shall wage his Lawe, for that it is no Court of Record. *10.H.6.7. 1.H.7.25. 6.Eliz. Bendloes.*

In debt vpon an account before Auditors the Defendant shall not wage his Law, and this by construction of the Statute of W.2.ca.11. which giueth them great authority and faith, Coram Auditoribus, and therefore of an account before one auditor the Law lyeth. So if the Lord before Auditors be found in surplusage, in an action of Debt brought by the Accomptant, the Lord shall not wage his Law by construction also vpon this Statute, as an incident rising vpon the Account. *9.H.5.3 8.H.6.15. 22.H.6.35. 38.H.6.6. 14.H.6.62. 38.H.6.6.*

In an action of Debt by a Gaoler against the Prisoner for his victuals the Defendant shall not wage his Law, for he cannot refuse the Prisoner, and ought not to suffer him to dye for default of sustenance, otherwise it is for tabling of a man at large. *28.H.6.4. 19.H.6.20. 22.H.6.13. 39.H.6.18.*

In an action of Debt brought by an Attorney for his Fees the defendant shall not wage his Law, because he is compellable to be his Attorney. And so if a seruant be retained according to the Statute of Labourers in an action of Debt for his Salary his master shall not wage his Law, because he was compellable to serue, otherwise it is, if he be not retained according to the Statute. *21.H.6.4. 38.H.6.22. 39.H.6.18.*

Whersoeuer a man is charged as Executor or Administrator, he shall not wage his Law, for no man shall wage his Law of another mans Deed, but in case of a Successor of an Abbot, for that the house neuer dyeth. *3.H.6.38. 1.H.7.25. 13.H.7. 10.H.7.18.*

In Debt vpon a penalty giuen by Statute, the Defendant shall not wage his Law. There is another kinde of wager of Law in a real action, of Non summons, but thereof Littleton speaketh not.

¶ *Et sur ceo* Herle *Iustice dit, &c.* Hereby it appeareth that it is

the office of the Iudges to instruct the grand Assise or Jury in points of Law, for as the graund Assise or other Iurors are triers of the matters of fact, Ad questionem facti non respondent Iudices, so Ad questionem juris non respondent Iuratores. And accordingly the Iudge in this case directed the grand Assise, viz. if they found that, &c.

Glanv.li.12.ca.1.&c. Bracton li.5.fol.328

¶ *Per que fuit agard.* Here are two things to bee obserued. First the forme of a Iudgement finall. Secondly, that a Iudgement finall is to be giuen in this particular case. For the forme of the finall iudgement for the Tenant is here expressed, that the Tenant shall hold the Tenements demanded against him, to him & his heirs quite of the Demandant and his heires for euer, and the Demandant in the mercy. Quod tenens teneat terram illam sibi & hæredibus suis in pace versus petentem & hæredes suos in perpetuum.

Lib.5 fol.85. Pennins case.

For the second point seeing the Wise is ioyned vpon the meere right, albeit the Verdict of the Grand Assise be giuen vpon another point, yet iudgement finall shall be giuen. And so it is if the Tenant after the Wise ioyned make default, or confesse the action, or if the Demandant be Non-suite, and yet in none of these cases they of the grand Assise gaue their verdict vpon the meere right.

34.E.3.Iud.m.256.adiudge accord 13.H.4 Iud.m.245. 10.H.6.8.20.H.6.38.b. 21.H.6.34.b. 26.H.8.8.b. 1.Mar.Dy.98.Li.5.fo.85. Pennins case.F.N.B.5.11,31.

¶ *Come est auant dit*, Vid.Sect.478.

Chap.9. Of Confirmation. Sect.515.

Bract.li.2.fo.32.b.& 58,59. Brit.235.

¶ Here first our Authour shewes what a Confirmation is: *Confirmation.* Confirmatio commeth of the verbe * Confirmare, qđ est firmum facere, and therefore it is said, That Confirmatio omnes supplet defectus, licet id quod actum est ab initio, non valuit. A Confirmation is a conueyance of an estate or right in esse, whereby a voidable estate is made sure & vnanoydable, or whereby a particular estate is increased.

* Lit pag.sequen.

Bract.li.2.58.

A Confirmation doth not streng then a voyde estate. Confirmatio est nulla vbi donum præcedens est inualidum, & vbi donatio nulla omnino nec valebit confirmatio: for a Confirmation may make a voidable or defeasible estate good, but it cannot worke vpon an Estate that is voyd in Law. Non valet confirmatio nisi ille qui confirmat sit in possessione rei vel iuris vnde fieri debet confirmatio, & eodem modo nisi ille cui confirmatio fit, sit in possessione. And another saith, (c) Confirmare est id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiua, & post tempus confirmata, confirmatio enim omnem supplet defectum, poterit enim esse in pendenti donec per ratihabitionem hæredis cum ad ætatem peruenerit roboretur.

Bract.li.2.fo.27.58.38.H.6. 34.37.Pl.Com.Count.de Leicester.case.

10.E.2.Cõfirm.24.32.E.3.9.

(c) Flet.li.3.ca.14.& li.3.c.3

¶ Fait de Confirmation & commeunement en tiel forme, ou a tiel effect, Nouerint vniuersi, &c. me A. de B. ratificasse, approbasse & confirmasse C. de D. statum & possessionem, quos habeo, de, & in vno mesuagio, &c. cum pertiñ in F. &c.

A Deed of confirmation is commonly in this forme, or to this effect: *Know all Men &c. That I A. of B. haue ratified, approoued, and confirmed to C. of D. the estate and possession which I haue of and in one Messuage, &c. with the Appurtenances in F. &c.*

44.Ass.3.

¶ Ratificasse. Ratificare est ratum facere, and is æquipollent to Confirmare, which as hath beene sayd, is firmum facere.

¶ Approbasse commeth of Ad and Probo, which is to make perfect and good.

¶ Confirmasse. Here is to bee obserued, That there bee two kinds of Confirmations, viz Confirmations expresse or in Deed, whereof Littleton hath here put these three examples and Confirmations implied, or in Law, whereof Littleton hereafter speaketh in this Chapter. Quælibet confirmatio, aut est perficiens, crescens, aut diminuens, and of all these Littleton putteth examples in this Chapter. And hereof Fleta saith, Carta autem de confirmatione est illa quæ alterius factum consolidat & confirmat, & nihil noui attribuit, quandoque tamen confirmat & addit.

Ls.9.fo.142. Beamonds case. Flet.li.3.ca.14.

Sect.

Section 516.

¶ Et en ascũ case vn fait de Confirmation est bone et auailable, lou en tiel case vn Fait de Release nest passe bone, ne auailable. Sicõe ieo lessa Terre a vn home pur terme de sa vie, le quel lessa meſm̃ la terre a vn auter p̃ terme de xl. ans, per force de quel il est en possession. Si ieo p mon Fait confirme lestate del Tenant a terme dans, et puis le tenant a terme de vie mozust durant le terme des ans, ieo ne puis enter en la Terre durant le dit terme.

AND in some case a Deed of Confirmation is good and auailable, where in the same case a Deede of Release is not good nor auaileable. As if I let land to a man for terme of his life, who letteth the same to another for terme of fortie yeares, by force of which he is in possession: if I by my Deed confirme the Estate of the Tenant for yeares, and after the Tenant for life dieth during the terme of yeares, I cannot enter into the Land during the said terme.

¶ LIttleton in this chapter putteth eight Diuersities betweene a Confirmation and a Release, and thereof for illustration here he putteth two cases in this and the next Section, which vpon that which hath beene sayd in the precedent Chapters, is sufficiently explained. Onely in both these cases this is to bee obserued, That where a Confirmation shall enlarge an estate, there priuitie is required, as well as in the case of the Release, as by many examples which Littleton puts in this Chapter appeareth. And note here is the first case wherein a Release and a Confirmation doe differ:

49.E.3.32.

9.H.6.22. Tit Release 44

Lessee for life made a Lease for thirtie yeares, and after the Lessor and Lessee for life made a Lease for sixty yeares to another, which Lease for sixtie yeares the Lessor did first confirme, and after the Lessor confirmed the lease for thirtie yeares, and after Tenant for life dyed within the thirtie yeares, and it was adiudged, (d) That the Lease for thirtie yeares was determined by the death of Lessee for life, and that the Lessee for sixtie yeares might enter, for that albeit the Lease for sixty yeares was the latter in time, yet was it of greater force in Law, for that the Lessor who had power to confirme which of them he would, did first confirme the second Lease.

(d) *Inter Vnwel & Lodge. temp. Reg. Eliz.*

In this Chapter is also to be obserued eight Cases, wherein a Release and a Confirmation haue the like operation in Law.

Sect. 517.

¶ Vmore si ieo per mon fait de Release auoy releas al tenant a terme dans en la vie le tenant a terme de vie, cel Release serra voyd, pur ceo que adonqs na fuit ascun priuity perent moy et le tenant a terme dans, car release nest auaileable al Tenant a terme dans mes lou est vn priuitie perent luy et celuy q̃ releasast.

YEt if I by my Deed of Release had released to the Tenant for yeares in the life time of the tenant for life, this Release shall be voyd, for that then there was not any priuitie betweene me and the Tenant for yeres: for a Release is not auailable to the Tenant for yeares, but where there is a priuitie betweene him and him that releaseth.

This belongeth to the first diuersitie betweene a Release and a Confirmation.

Sect.

Section 518.

THeere is the second diuersity betweene a Releale and a Confirmation. But if the Disseisor make a Lease for yeares to begin at Michaelmasse, and the Disseisee confirm his estate, this is voyd, because he hath but interesse termini, and no estate in him, wherreupon a Confirmation may enure.

4.H.7.10.by Read. 22.E.4.36.

CEnmesme le maner est, si ieo soy disseisie, et le Disseisor fait vn Lease a vn auk pur terme dans, si ieo release al termor, ceo est voyde, mes si ieo confirma lestate le termor, ceo est bone & effectual.

IN the same manner it is if I be disseised, and the Disseisor make a Lease to another for term of yeares, if I release to the Termor this is voyd: but if I confirme the Estate of the Termor, this is good and effectuall.

Sect. 419.

CItem si ieo soy disseisie, & ieo confirma lestate le Disseisor, il ad bone et droiturel estate en Fee simple, coñt que en le fait de confirmation nul mention est fait de ses heires, pur ceo que il auoit fee simple al temps de Confirmation. Car en tiel case si le disseisee confirma lestate le disseisor. A auer et tener a luy et a ses heires de son corps engendres, ou a auer et tener a luy pur le terme de sa vie, vncore le disseisor ad fee simple, et est seisie en son demesne come de fee, pur c̄ que quant son estat fuit cõfirm̄, donque il auoit fee simple, et tiel fait ne poit changer son estat sãs entry fait sur luy, &c.

ALso if I be disseised, and I confirme the estate of the Disseisor, he hath a good and rightfull estate in Fee simple, albeit in the Deed of Confirmation no mention be made of his heires, because he had Fee simple at the time of the Confirmation. For in such case if the Disseisee confirme the state of the Disseisor, To haue and to hold to him and his heires of his bodie engendred, or to haue and to hold to him for terme of his life, yet the Disseisor hath a Fee simple, and is seised in his Demesne as of Fee, because when his estate was confirmed, hee had then a Fee simple, & such Deed cannot change his estate, without entry made vpon him, &c.

19.H.6.22.6.E.3.Confirm.4. THeere is the first case wherein the Release and Confirmation doth agree, viz. a Confirmation to a Disseisor in Taile, or for any particular estate, is of the like force as a Release to a Disseisor, during such estate, which in both cases is good for euer. In the same manner it is, if the Disseisor make a gift in taile, and the Disseisee confirme the estate of the donee for the life of the donee, this confirmation enures to the whole estate taile, for a confirmation can make no fraction of any estate, to extend but to part of the estate onely: Et sic de cæteris.

Sect.

Section 520.

CEo. Mesme le maner est, si son estate soit confirme pur terme de vn iour ou pur terme dun heure, il ad bon estate en fee simple, put ceo que son estate en fee simple fuit vn foits confirm. Quia confirmare idem est quod firmum facere, &c.

IN the same manner it is if his estate bee confirmed for tearme of a day, or for tearme of an houre, hee hath a good estate in fee simple, for this, that his estate in fee simple was once confirmed. *Quia confirmare idem est quod firmum facere, &c.*

THere is the second case wherein the release and Confirmation doe agree. The reason of this is for that the Disseisor hath a fee simple, and therefore if his estate be confirmed but for an houre it is good for euer, because (saith Littleton) Confirmare idem est quod firmum facere.

Nota, a diuersitie betweens a bare assent without any right or interest, and an assent coupled with a right or interest; and therefore an Attornement cannot bee made for a time nor vpon Condition; *Lib.5.fol.81. Fedecast.* but if the person make a Lease for a hundred yeares, the Patron and the Ordinary may confirme fiftie of the yeares, for they haue an interest, and may charge in time of vacation. And so a Disseisor make a Lease for a hundred yeares, the Disseisee may confirme parcell of those yeares but then it must be by apt words, for he must not confirme the Lease or demise or the estate of the Lessee, for then the addition for parcell of the tearme should be repugnant when the booke was confirmed before, but the Confirmation must be of the Land for part of the tearme. So may the Confirmation be of part of the land, as if it be of fortie, he may confirme twentie, &c. So if tenant for life make a Lease for a hundred yeares, the Lessor may confirme either in part of the terme or for part of the Land. But an estate of Freehold cannot be confirmed for part of the estate, for that the estate is intire, and not seuerall as yeares be.

Sect. 521.

ITem si mon Disseisor fait vn leas a terme de vie, le remainder ouster en fee, si ieo releas al tenant a terme de vie ceo vera a celuy en le remainder. Mes si ieo confirm lestate ô le tenant a terme de vie, vncore apres son decease ieo puis bien enter, pur ceo que riens est confirme forsque lestate le tenant a terme de vie, issint que apres son decease, ieo puis enter. Mes quant ieo releas

ALso if my Disseisor maketh a Lease for life, the remaynder ouer in fee, if I release to the Tenant for life, this shall enure to him in the remaynder. But if I confirme the Estate of the Tenant for tearme of life, yet after his decease I may well enter, because nothing is confirmed but the Estate of the Tenant for

THere is the third Case wherein the release, and confirmation differ, for the confirmation to the Tenant for life doth not enure to him in the remainder.

And so it is when the seuerall estates be in one person, as if the Disseisor make a gift in taile the remaynder to the right heires of Tenant in taile, if the Disseisee confirme the estate in tayle, it shall not extend to Fee simple, no more then if the Disseisor had made a gift in taile, the remainder for life, the remainder to the right heires of tenant in taile, this extendeth only to the estate taile, and not to

to the remaynder for life, nor to the remaynder in fee. But if the Disseisor make a lease for life to A. & B, and the Disseisee confirme the estate of A, B. shall take advantage thereof, for the estate of A. which was confirmed was ioynt with B and in that case the Disseisee shall not enter into the Land, and deuest the mottie of B.

If the Disseisor infeoffe A and B, and the heires of B. if the Disseisee confirme the estate of B for his life, this shall not only extend to his Companion, as hath beene said, but to his whole fee simple, because to many purposes hee had the whole Fee simple in him, and the confirmation shall bee taken most strong against him that made it.

Tenant in tayle discontinueth in fee and dieth, the Discontinuee make a lease for life, and granteth the reuersion to the issue, he shall haue a Formedon against tenant for life, for by his Formedon he must recouer estate of Inheritance, and the Lesse for life hath not the Inheritance, but the issue in taile himselfe hath it.

tout mon droit al tenant a terme de vie, ceo vera a celuy en le remainder, ou en le reuersion, pur ceo que tout mon droit est ale per tiel releas. Mes en cest cas, si le disseisie confirme lestate & le title celuy en le remainder sans ascun confirmation fait a tenant a terme de vie, le disseisie ne poit enter sur le tenant a term̃ de vie, pur ceo que l'remainder est dependant sur lestate le tenant a terme de vie, & si son estate serroit defeate, le remainder serroit defeate, per lentrie le disseisie, & ceo ne serra reason que il per son entre defeateroit le remainder encounter son confirmation, &c.

life, so that after his decease I may enter. But when I release all my right to the Tenant for life, this shall enure to him in the remainder or in the reuersion, because all my right is gone by such release. But in this case if the Disseisee confirme the estate and title of him in the remainder without any confirmation made to Tenant for life, the Disseisee cannot enter vpon the Tenant for terme of life, for that the remaynder is depending vpon the state for life, and if his estate should bee defeated, the remainder should be defeated by the entry of the Disseisee, and it is no reason that he by his entry should defeat the remainder against his confirmation, &c.

If feoffee vpon condition make a Lease for life, or a gift in taile, and the feoffor release the Condition to the feoffee, he shall not enter vpon the Lessee or Donee, because he cannot regaine his ancient estate.

If the Feoffee vpon Condition make a Lease for life, the remaynder in fee, if the Feoffor release the Condition to the Lessee for life, it shall enure to him in the remaynder, aswell as in the case of the right, or of a Rent, &c.

If a Feme Disseisoresse make a feoffment in fee to the vse of A. for life, and after to the vse of herselfe in taile, and the remaynder to the vse of B. in fee, and then taketh husband the Disseisee, and he releaseth to A. all his right, this shall enure to B, and to his owne wife also, for by the rule of Littleton it must enure to all in the remaynder.

But if A. letteth to B for life, and B. maketh a Lease to C. for his life, the remaynder to A. in fee. A. releaseth to C. all his right, this is good to perfect the estate of C. for his life. But when C. dieth A. shall bee in of his old estate for his release could not enure to himselfe to perfect his defeasible remaynder, but his ancient right remayneth. And note that in these two cases the fee is deuested, and vested all at one instant, in the same manner, as if tenant in taile make a Lease for life, at the same instant the estate taile is deuested out of the Donee, and the reuersion in fee out of the Donor, and a new fee vested in Tenant in taile. And so if the husband make a Lease for life of his wiues land, he deuesteth his owne estate, that he hath in her right, and the Inheritance of his wife, and at the same instant vesteth a new reuersion in fee in himselfe.

Vide 29. Ass. 17. 30. H. 8. Roome en value Br. 30. 13. Eliz. entr. cong. Br. 137.

¶ *Mes en cest case si le disseisee confirme lestate & title celuy en le remaynder.* Here is the third case wherein the Release and Confirmation

per agree for the Confirmation made to him in the remaynder shall anayle the Tenant for life, as much as the Release shall. *Pl. Com. Delamere case. Vid. Sect. 374.*

¶ *Pur ceo que le remaynder est dependant, &c.* By this some haue gathered that if a Disseisor make a Lease for life, reserving the reuersion to himselfe, and the Disseisee confirmeth the state of the Disseisor, that he may enter vpon the Lessee, because the estate of him in the Reuersion dependeth not vpon the state for life as the Remainder, but all is one, for by the Confirmation made to him in the Reuersion, all the right of him that confirmeth is gone, as well as when he maketh it to him in remainder, and he cannot by his entrie auoide the estate of the Lessee for life, but he must auoide the state of the Lessor which against his owne confirmation, he cannot doe, and it hath beene adiudged, that if a Disseisor make a Lease for life, and after leaue a Fine of the reuersion with Proclamations, and the fiue yeares passe, so as the Disseisee is for the Reuersion barred, he shall not enter vpon the Lessee for life.

¶ *Le remainder serra defeat.* It is regularly true, that when the particular estate is defeated, that the remainder thereby shall be also defeated, but it falleth in diuers cases.

For where the particular estate and the remainder depend vpon one title, there the defeating of the particular estate is a defeating of the remainder. But where the particular estate is defeasible, and the remainder by good title, there though the particular estate be defeated the remainder is good. As if the Lessor disseise A. Lessee for life, and make a Lease to B for the life of A. the remainder to C in fee, albeit A. re-enter, and defeate the estate for life, yet the remainder to C being once vested by good title shall not be auoyded, for it were against reason, that the Lessor should haue the remainder againe against his owne Liuery, and this is well warranted by the reason of Littleton in this case. So it is if a Lease be made to an infant for life, the remainder in fee, the Infant at his full age disagree to the estate for life, yet the remainder is good, for that it was once vested by good title, for in both these cases, there was a particular estate at the time of the remainder created. *Vid. Pl. Com. Colthirst's case.*

If a Lease be made to A. for the life of B. the remainder to C. in fee, A. dyeth before any occupant entreth, here is a remainder without a particular estate, and yet the remainder continueth good. *17. E. 3. 48.*

Rent is granted to the Tenant of the land for life, the remainder in fee, this is a good remainder, albeit the particular estate continued not, for Eo instante, that he tooke the particular estate, Eo instante the remainder vested, and the suspencion in iudgement of Law grew after the taking of the particular estate. *3. E. 3. Ab. Ass.*

If a man grant a rent to B. for the life of Alice, the remainder to the heires of the body of Alice, this is a good remainder, and yet it must vest vpon an instant. *7. H. 4. 6.*

Sect. 522.

¶ Item si sont deux disseisors, et le disseisee relessa a vn de eux il tiendra son compagnon hors de la terre. Mes si le disseisee confirma lestate de lun, sans plus dire en le fait, aleuns dient q̄ il ne tiendra son compagnion dehors. Mes tiendra ioyntment ouesque luy pur ceo que riens fuit confirme forsque

ALso if there bee two disseisors and the disseisee releaseth to one of them, hee shall hold his companion out of the land, but if the disseisee confirme the estate of the one without more saying in the Deed, some say that he shall not hold his companion out, but shall hold ioyntly with him for that nothinh was con-

¶ This is the fourth case wherein the release and the confirmation seeme to differ, being made vnto one of the Disseisors.

¶ *Confirme forsque son estate, &c.* Hereby it appeareth that if the Disseisee confirme the estate of the one Disseisor in the lands, To haue and to hold the lands or tenements, or the right of the Disseisee, to him and his heires, hee shall hold out the other Disseisor, and that appeareth by Littleton, first vpon these words (Confirme the state of one) without more saying in the Deed.

Deed, viz. To haue and to hold the Lands, &c Secondly, the reason of Littleton in expresse words is, for that nothing was confirmed but his estate which was ioynt. Thirdly, the next two Sections make it plaine where the Habendum is added.

Hereby also it appeareth, that a Release is more forcible in Law then a Confirmation. If the Disseisee and a stranger Disseise the heire of the Disseisor, and the disseisee confirme the estate of his companion, this shall not extinguish his right that was suspended: so as if the heire of the Disseisor re-enter the right of the disseisee is reuiued. And so it is, if the Grantee of a Rent-charge and an estranger disseise the Tenant of the land, and the Grantee confirme the estate of his Companion, the Tenant of the land re-enter, the Rent is reuiued, for the Confirmation extended not to the Rent suspended, otherwise it is of a Release in both cases.

Sect. 523.

ET pur ceo ascuns ont dit, que si deux iointenants sont, et lun confirme lestate lauter, que il nad forsque ioint estat, sicome il auoit adeuant. Mes sil ad tiels parols en le fait de confirmation, a auer et tener a luy et a ses heires touts les tenements dont mention est fait ẽ le confirmation, donques il ad estate sole en les tenements, &c. Et pur ceo il est boñ et sure chose en chescun confirmation dauer ceux parolx: A auer et tener les tenements, &c. en fee, ou en fee taile, ou pur terme de vie, ou pur terme dans, solonque ceo que le cas est, ou le matter gist.

AND for this some haue said that if two ioyntenants bee, and the one confirme the estate of the other, that he hath but a ioynt estate as he had before, but if hee hath such words in the Deed of confirmation, to haue and to hold to him and to his heires all the tenements wherof mention is made in the Confirmation, then he hath a sole estate in the tenements, &c. And therefore it is a good and sure thing in euery confirmation to haue these words, To haue and to hold the tenements, &c. in fee, or in fee taile, or for terme of life, or for terme of yeares according as the case is or the matter lyeth.

AND this Confirmation leaueth the state as it was, and doth not amount to any seuerance of the ioynture as some haue said,

34.E.3.tit.Confirm. *Mes sil ad tiels parols en le fait, &c.* This is plaine and euident enough.

Et pur ceo il est bone & sure chose, &c. This is good counsell and worthy to be followed.

Sect. 524.

HEre the diuersity is apparant betweene a Confirmation of the estate for life in the land to haue and to hold the said state in the land to him and his heires, this cannot en-

CAR al entent dascuns, si hõe lessa terre a vn auter pur terme de vie, et puis confirma son estate

FOr to the intent of some, if a man letteth land to another for life, and after confirme his estate which

estate que il ad en ñ la terre, a auer et tener son estate a luy et a ses heires, cest confirmation quant a ses heires est void, car ses heires ne poient auer son estat que ne fuit forsque pur terme de son vie. Mes sil confirma son estate p ceux parolx, a auer mesme la terre a luy et a ses heirs, cest confirmation fait fee simple en cest case a luy en la terre, pur ceo que les parolx a auer et tener, &c. ba a le terre & nemy al estate que il ad, &c.

hee hath in the same land, to haue and to hold his estate to him and to his heires, this confirmation as to his heires is voide, for his heires cannot haue his estate which was not but for terme of his life. But if he confirme his estate by these words, to haue the same land to him and to his heires, this confirmation maketh a fee simple in this case to him in the land, for that the words to haue and to hold, &c. goeth to the land and not to the estate which hee hath, &c.

large his estate, for his estate being but for life, that estate cannot bee extended to his heires. But in that case if he confirme the state for life in the land in the premisses of the Deed and the Habendum is in this sort, To haue and to hold the land to him and his heires, this shall enlarge his estate and create in him a fee simple. 18.E.3.40.

Wherein is to bee noted (e) that the Habendum and the premisses doe in substance well agree together, and that the Habendum may enlarge the premisses but not abridge the same. (e) *Vid. Pl.Com. in Throgmortons case fo. Wrotesleyes case 198.*

And seeing that in conueyances, limitations of remainders are vsuall and common assurances, it is dangerous by conceipts or nice distinctions to bring them in question, as haue in latter time beene attempted.

¶ *Son estate, Vid. Sect.650.*

Sect. 525.

¶ Item si ieo lessa certaine terre a vn feme sole pur term de sa vie, la quel prent baron, et puis ieo confirma lestate le baron et sa feme, a auer et tener pur term de lour deux vies, en cest case le baron ne tient iointment ove sa feme, mes tient en droit de sa feme pur terme de sa vie. Mes cest confirmation vera a le baron per voy de remainder p terme de sa vie, si survequist sa feme.

ALso if I let certaine land to a feme sole for terme of her life, who taketh husband, & after I confirme the estate of the husband and wife, to haue and to hold for terme of their two liues. In this case the husband doth not hold ioyntly with his wife, but holdeth in right of his wife for term of her life. But this confirmation shall enure to the husband by way of remainder for terme of his life, if he suruiueth his wife.

¶ HEre is the fourth case wherein the Release and confirmation doe agree, and in this case it is to be obserued that the Baron hath such an estate in the land in the right of his wife as hee is capable of a confirmation to enlarge his estate, and therefore if the confirmation had beene made of his estate to him alone to haue and to hold the land to him and to his heires, this had beene good to haue conueyed the fee simple to him after the decease of his wife, for if in this case a Release be made to the husband and his heires, this is sufficient to conuey the inheritance of the land to the husband. *Vid.Sect.573.* 16.H.6.tit.Release 45. 22.E.3,tit.Release Statham.

¶ *Ne tient iointment ove sa feme.* For two causes, First because the

the wife hath the whole for her life. Secondly, Joyntenants must (as hath beene before layd in the Chapter of Joyntenants,) come in by one title. But in this case if the Confirmation had beene made to the husband and wife To have and to hold the land to them two and to their heires, they had beene Joyntenants of the Fee simple, and the husband seised in the right of his wife for her life, for the husband and the wife cannot take by moities during the Coverture.

18.E.3.20.

If a man letteth land to the husband and wife, to have and to hold the one moitie to the husband for terme of his life, and the other moitie to the wife for her life, and the Lessor confirme the estate of them both in the land, To have and to hold to them and to their heires, by this Confirmation as to the moitie of the husband, it enureth onely to the husband & his heyres, for the wife had nothing in that moitie, but as to the moitie of the wife, they are joyntenants, as hath bin sayd, for the husband hath such an estate in his wifes moitie, in her right, as is capable of a Confirmation. But if such a Lease for life be made to two men by severall moities, and the Lessor confirme their estates in the land, To have and to hold to them and to their heires, they are Tenants in Common of the Inheritance, for regularly the Confirmation shall enure according to the qualitie and nature of the Estate which it doth enlarge and increase.

18. Ass.p.3.18.E.3.Confir.17
17.E.3.68. 28.E.3.94.
40.E.3. 8.Ass.20.

If a Lease for life be made to A. the remainder to B for life, and the Lessor confirms their Estates in the land, To have and to hold to them and their heires, A. taketh one moitie to him and his heires, and therefore of the one moitie he is seised for life, the remainder to B. for life, and then to him and his heires: Of the other moitie A. is seised for life, the immediate Inheritance to B. and his heires, because as to the moitie which B. takes, the same is executed as if the Reuersion be granted to Tenant for life, and to a stranger, it is executed for one moytie (as hath beene sayd before) and therefore in this case they are Tenants in Common.

39.H.6.9.

If lands be given to two men, and to the heires of their two bodies begotten, and the Donor confirmeth their two estates in the land, To have and to hold the land to them two and to their heires: In this case some are of opinion, That they shall be Joyntenants of the Fee simple, because the Donees were joyntenants for life, & (say they) the Confirmation must enure according to the estate which they have in possession, and that was joynt. But others hold the contrarie; for first they say, That the Donees have to some purposes severall Inheritances executed, though betweene the Donees surviuor shall hold for their lives. Secondly they say, That when the whole estate which comprehendeth severall Inheritances, is confirmed, the Confirmation must enure according to the severall Inheritances, which is the greater and most perdurable estate, and therefore that the Donees shall be Tenants in Common of the Inheritance in this case.

¶ *Per voy de remainder, &c.* Here some question hath beene made of this terme Remainder, without any cause at all, because in Law it is in nature of a Remainder. For in case of a fine, when a reuersion expectant upon an estate for life in A. is granted to B. Et quæ ad ipsum reuerti debet post mortem A. præfato B. & hæredibus suis remanebit, &c. and a more colourable exception might be taken against this word Remanent there, than in the case of Littleton.

V.Sect.573.

Pl.Com.Coltherst case. Doct & Stud.ca.21. *16 H.6.tit.Release 45. (o) 9 E.4.18. (p) 6.E.3 9. (q) 17.E.3.68.b.

It is true, That in *16.H.6. it is called a Reuersion: in (o) 9.E.4. it is called a Remainder: in (p) 6 E.3 it is sayd, That by the Confirmation an estate accrued to the husband for terme of his life. In (q) 17.E.3. the husband, liuing the wife, shall haue nothing but in abeyance after the death of his wife. But lest there should be pugna verborum, which learned and wise men euer auoyd, all doe resolue, That the estate of the husband is good, and that it doth enure by way of increase and inlargement of his estate. And albeit in this case of Littleton, the husband by the Confirmation gaineth an estate for life in remainder, (as Littleton termeth it) yet if the husband doth waste, an Action of waste shall lie against him and his wife, notwithstanding the meane remainder, because the husband himselfe committeth the waste, and doth the wrong: And therefore shall not excuse himselfe for his committing of waste, in respect he himselfe hath the remainder, no more than if a man letteth to A. during the life of B. the remainder to him during the life of C. if he commit waste, an Action of waste shall lie against him.

17.E.3.68.b. V.Sir Ed.Coverts case,11. fo.

Sect. 526.

¶ This is the fifth case wherin the Release and Confirmation doe agree: and it is to be observed, That Chattels reals, as Leases for yeares, Wardships, Estates for life or the like, are transferred by the generall words of Release or Confirmation, as well as Freehold: but Chattels personall, as Plate, Money, Corne, Cattell, Debts, Goods, Implements of houshold, and the like, cannot passe by the generall words of Release or Confirmation, but by the speciall words of Grant, Bargaine and Sale, Gift, Assignment, or the like.

5.E.3.17.b. Pl.Com.418.b. 3.H.6.33. 14.H.4.12. 38.E.1.23 Pl.Com.Dame Malorie case 50. Ass p.15. 4 H.6.5 7.H.5.1 9.H.6.52 37.Lib.Ass. 21.H.7.29. 21.E.4.40. 26.H.8.7.

¶ Mes si ieo lessa al feme sole terre pur terme dans, le quel puis mesme baron

But if I let land to a Feme sole for terme of yeares, who taketh husband, and af-

baron, et puis ieo confirma lestate le baron et sa feme, a auer et tener la terre pur terme d lour dux vies: en cest case ils ont ioynt estate en le franktenement de la terre, pur ceo que la fem̃ nauoit franktenement adeuãt, &c.

ter I confirm the estate of the husband and his wife, To haue and to hold the land for term of their two liues: In this case they haue a ioynt estate in the freehold of the Land, for that the wife had no Freehold before, &c.

ships, and the like, are not giuen to the husband absolutely, (as all Chattels personalls are) by the intermarriage, but conditionally if the husband happen to suruiue her, and he hath power to alien them at his pleasure: but in the meantime the husbãd is possessed of the Chattels reall in her right.

Secondly, That the husband hath such a possession in her right of the Chattel, as is capable of a Confirmation, or of a Release.

Thirdly, That the Confirmation in this case to the husband and wife for their liues, maketh them Ioyntenants for life, because a Chattell of a Feme Couert may bee disowned: and so note a diuersitie betweene a Lease for life, and a Lease for yeares, made to a Feme Couert; for her estate of Freehold cannot be altered by the Confirmation made to her husband and her, as the terme for yeares may, whereof her husband may make disposition at his pleasure.

Section 527.

¶ Item si mon disseisor granta a vn rent charge hors de la terre dont il moy disseisist, et ieo rehersant le dit grãt confirma mesme le grant, et tout ceo que est compryse deins mesme le graunt, et puis ieo enter sur le Disseisor, Quære en cest case, si l'Terre soit discharge de le rent ou nemy.

ALso if my Disseisor granteth to one a Rent charge out of the Land whereof he disseised me, and I rehearsing the sayde Grant, confirme the same Grant, and al that which is compriſed within the same grant, and after I enter vpon the Disseisor, *Quære* in this case, if the land be discharged of the Rent or no.

¶ This is the fifth case wherein the Release and Confirmation doe differ, for a Release to the Grantee in this case (a) were voyd. It is holden by some authoritie since Littler. wrote, That the Disseisee after his re-entrie shall not auoyd the Rent charge against his own Confirmation: and there a generall rule is taken, that such a thing as I may defeat by my entrie, I may make good by my Confirmation.

(a) 11.H.7 28.Li.1.fo.147. Anne Mayors case.3.H.4.10

If the Feoffee vpon Condition grant a Rent Charge in fee, and the Feoffor confirmeth it, and after the Condition is broken, and the Feoffor enter, hee shall not auoyd the Rent charge. And so it is if the heire of the Disseisor grant a Rent charge, and the Disseisee confirmeth it, and after recouer the land, he shall not auoyd the rent: and yet in neither of these cases, his entrie was congeable at the time of the Confirmation.

Li.1.fo.147.148.Anne Mayors case.

Section 528.

¶ Item si vn parson dun Eglise charge le glebe de son Eglise per son fait, & puis l'patron et Ordinarie

ALso if a Parson of a Church charge the Glebe land of his Church by his Deed, and after the patron & Ordinary con-

¶ *Parson.* Persona in the legall signification it is taken for the Rector of a Church parochiall, and is called Persona Ecclesiæ, because hee assumeth and taketh vpon him the person of the Church, and is sayd

Glanu.li.13 ca.23.24.25. Bract.li.4.ca.285, &c. Brit.fo.234.b. &c. Flet.li.5. ca.19.20. & li.6.ca.13. Reg. F.N.B.48.49.

ſayd to be ſeiſed in iure Eccleſiæ, and the Law had an excellent end herein, viz. That in his perſon the Church might ſue for and defend her right; and alſo be ſued by any that had an elder and better right, and when the Church is full, it is ſayd to be plena & conſulta of ſuch a one Parſon thereof, that is full and prouided of a Parſon, that may vicem ſeu perſonã eius gerere.

Bris. vbi ſupr.

Perſona Impерſonata, Parſon Impерſonee is the Rector that is in poſſeſſion of the Church Parochiall, be it preſentatiue, or impropriate, and of whom the Church is full.

8.E.3.26.43. 38.E.3.4. 3.Mar.Dy.123.

Here are diuers things to bee noted: Firſt, That the Confirmation is of the grant, which in deed is but a meere aſſent by Deed to the Grant. And therefore it is holden, That if there be Parſon, Patron, and Ordinarie, and the

7.H.4.15.

Patron and Ordinarie giue licence by Deed to the Parſon to grant a Rent charge out of the glebe, and the Parſon granteth the Rent charge accordingly, this is good, and ſhall bind the Succeſſor, and yet heere is no confirmation ſubſequent, but a Licence precedent.

confirmont meſme le grant, & tout ceo que ẽ compriſe deins m̃ le grant, donques le grant eſtopera en ſa force, ſolonque l'purport de meſme le graunt. Mes en tiel caſe couient que le Patron eit Fee ſimple en lauowſon, car ſil nad eſtate en Lauowſon forſque pur terme de vie, ou en le taile, donque l'grant ne eſtopera forſque durant ſa vie, & la vie le Parſon que grant caſt, &c.

firme the ſame grant, and all that is compriſed in the ſame Grant, then the Grant ſhall ſtand in his force, according to the purport of the ſame Graunt. But in this caſe it behoooueth, that the Patron hath a Fee ſimple in the Aduowſon, for if hee hath but an Eſtate for life or in taile in the aduowſon, then the Graunt ſhall not ſtand, but during his life, and the life of the Parſon which granted &c.

Secondly, The Ordinarie alone, without the Deane and Chapter, may agree thereunto, either by Licence precedent, or Confirmation ſubſequent, for that the Deane and Chapter hath nothing to doe with that which the Biſhop doth as Ordinarie, in the life time of the Biſhop.

(b) 19.El.Dy.356.357. 11.H.6.9.33.H.8.tit Charge Br.58.

Thirdly, (b) But if the Biſhop be Patron, there the Biſhop cannot confirme alone, but the Deane and Chapter muſt confirme alſo, for the Aduowſon or Patronage is parcell of the poſſeſſion of the Biſhoprick, and therefore the Biſhop without the Deane and Chapter, cannot make the Grant good but onely during his owne life, after the deceaſe of the Incumbent, either by Licence precedent, or Confirmation ſubſequent.

See more of theſe kind of Confirmations in my Reports.
Li.2.39.& 24.Ls.1.153.
Li.4.23.24.Ls.5.fo.31.81.
Le.10.6.li.11.19.li.6.34.

A. Parſon of D. is Patron of the Church of S. as belonging to his Church, and preſent B. who by conſent of A and of the Ordinarie grant a Rent charge out of the Glebe, this is not good to make the Rent charge perpetuall, without the aſſent of the Patron of A. no more than the aſſent of the Biſhop who is Patron, without the Deane and Chapter, or no more than the aſſent of the Patron, being Tenant in Taile or for life, as Littleton ſaith. And Littleton here ſaith, That the Patron that confirmes muſt haue a Fee ſimple, meaning to make the charge perpetuall. And Littleton after ſaith, That in the caſe of the Parſon the fee is in abeyance, and ſeeing the conſent of the Patron is in reſpect of his intereſt as heire, it appeareth by Littleton, he may conſent vpon Condition, otherwiſe it is of an Attornement, becauſe that is a bare aſſent. Alſo if the eſtate of the Patron be conditionall, and he confirmeth, and after the Condition is broken, his Confirmation is voyd.

31.E.3.Grant.61.26.aſſ.38. 8.El.Dy.252. Vi.li. fo. Leaſe de Deane & Chapter de Norwich.

Fourthly, He that is Patron muſt be Patron in Fee ſimple, for if hee be Tenant in Taile, or Tenant for life, his Confirmation or Agreement is not good to bind any Succeſſor, but ſuch as come into the Church during his life. But if the Patron be Tenant in Taile, and diſcontinue the eſtate in taile, the Leaſe ſhall ſtand good during the Diſcontinuance, or if the eſtate taile be barred, it ſhall ſtand good for euer.

But here is to be obſerued a diuerſitie betweene a ſole Corporation, as Parſon, Prebend, Vicar, and the like, that haue not the abſolute Fee in them, for to their Grants the Patron muſt giue his conſent. But if there be a Corporation aggregate of many, as Dean and Chapter, Maſter, Fellowes, and Scholliers of a Colledge, Abbot or Prior, Couent, and the like, or any ſole Corporation that hath the abſolute Fee, as a Biſhop with conſent of the Deane and Chapter, they may by the Common Law make any grant of or out of their poſſeſſions, without their Founder or Patron, albeit the Abbot or Prior, &c. were preſentable: and ſo it is of a Biſhop, becauſe the whole eſtate and right of the Land was in them, and they may reſpectiuely maintaine a Writ of Right.

12.H.4.11. 19.E.3.7. 9 Eliz.Dyer, 238. 11.H.6.9. 10 Eliz.Dyer, 6.E.3.10. 2.E.3.29. 9.E.4.6. 2.H.4.11. 38.E.3.19.25.E.3.54

It

If a Bishop hath two Chapters, and he maketh a grant, both Chapters must confirme it or else the Successor shall avoid it. But if one of the Chapters be dissolued, then the Confirmation of the other sufficeth, but it needeth not the Confirmation of the King who is Founder and Patron of all Bishoprickes.

Temps R.2.tit.grant 104. 50.E.3.tit. Assise Statham. 11. Eliz. Dier 282.

And note a diuersitie betweene a Confirmation of an Estate, and a Confirmation of a Deed, for if the Disseisor make a Charter of feoffment to A. with a Letter of Attorney, and before Liuery the Disseisee confirme the estate of A. or the Deed made to A, this is clerely void, though Liuery be made after. But if a Bishop had made a Charter of feoffment with a Letter of Attorney, and the Deane and Chapter before Liuery Confirme the Deed, this is a good Confirmation and Liuery made afterwards is good. And so it hath beene adiudged.

The like Law is of a Confirmation of a Deed of grant of a Reuersion before Attornement.

In the same manner it is if a Bishop at the Common Law had granted lands to the King in fee by Deed, and the Deane and Chapter by their Deed confirme the Deed of the Bishop, and after the Deed of the Bishop is inrolled, this is good albeit the Confirmation of the Deane and Chapter bee not inrolled, for the assent vpon the matter is made to the Bishop.

But this Confirmation that Littleton here speaketh of must bee made in the life, and during the incumbencie of the person, and so in the life of the Bishop, or of any other sole Corporation. But it is to be knowne that Grants made by Parsons, Prebends, Vicars, Bishops, Master and Fellowes of any Colledge, Deane and Chapter, Master or Gardeine of any Hospitall or any hauing any Spirituall or Ecclesiasticall liuing are restrained by (c) diuers Acts of Parliament, so as they cannot grant any rent charge, or to make any alienation, or to make any Leases other then such as are mentioned in those Acts which you may reade at large. And the expositions vpon the same in my (*) Commentaries.

33.E.3.Confirm.22. 31.E.3 Abbot 10.21.H.7.1. Vide Sect.393.& 643.
(c) 13.Eliz.cap.10. 1.Eliz.cap. 18.Eliz.cap.11. 1.Iac.cap.3. Vid Sect.393.& 648.
(*) Lib.2 fol.46. lib.4.76.& 120.lib.5.9.6.14.lib.6.37. lib.7.8.lib.11.67.

Sect. 529.

¶ Item si home lessa terre pur terme de vie, le quel tenant a terme de vie charge la terre oue vn rent en fee, & celuy en le reuersion confirma mesme le grant, le charge est assets bone & effectuall.

Also if a man letteth land for term of life, the which Tenant for life charge the land with a rent in fee, and hee in the reuersion confirme the same grant, the charge is good enough and effectuall.

¶ Here is a diuersitie to bee obserued where the determination of the Rent is expressed in the deed, and when it is implyed in Law. For when Tenant for life granteth a rent in fee this by Law is determined by his death, and yet a Confirmation of the grant by him in the reuersion make that grant good forever, without words of inlargement, or clause of distresse which would amount to a new grant. And yet if the Tenant for life had granted a Rent to another and his heires by expresse words, during the life of the Grantor, and the Lessor had confirmed that grant, that grant should determine by the death of Tenant for life.

26.Ass.Pl.38.45.Ass.Pl.13 Lib.1 fol.147.Anne Mauwes case.
14.Ass.Pl.14.

Tenant for life vpon a Condition grant a Rent in fee, the Lessor confirme the grant, and after the Condition is broken, the Lessor re-enter, he shall not auoid the grant.

Sect. 530.

¶ Item si soit vn perpetual chanterie, dont lordinarie nad rien a medler ne a faire, Quære si le patron del chaunte-

Also if there bee a perpetuall Chanterie wherewith the ordinary hath nothing to doe or meddle. *Quere* if the Patron of

¶ This is meant of a Chauntery Donatiue wherewith the Ordinary hath not to deale, and by this grant, when Littleton wrote, the Chanteris should haue beene charged for euer, because no other had any interest in this Chanteris

Vide Sect. 648.

same

saue only the Patron and Chauntry Priest, and the grant is made Concurrentibus hijs quæ in iure requiruntur. But since Littleton here, all, and all manner of such Chappels and Chaunteries perpetuall, whereof Littleton here speakes, are by (a) Acts of Parliament giuen to the Crowne, and the bodies Politike thereof dissolued. As hereafter, Section 648. more at large of all this present Section.

ry, & le Chapleine de mesme le chaunterie poient charg̃ l'chastery vers vn rent charge en perpetuitie.

the Chantery, and the Chapleine of the same Chantery may charge the Chantery with a Rent charge in perpetuitie.

(a) 37. H. 8. cap. 4. 1. E. 6. cap. 14.

Sect. 531.

HEre Littleton proceedeth according to the former diuision to shew words that in Law doe amount to a Confirmation. And here is to bee obserued, that some words are large and haue a generall extent, and some haue a proper and particular application. The former sort may containe the latter, as Dedi, or Concessi may amount to a grant, a feoffment, a gift, a Lease, a Release, a Confirmation, a Surrender, &c. and it is in the Election of the partie to vse to which of these purposes he will.

Bract. lib. 2. fol. 59. b. 21. H. 6. feoffments & faits 103. 22. H. 6 42. 14. H. 4 36. 19. H. 6. 44. 7. H. 7. 16. 32. E. 3. briefe 291. Brooke tit. Confirmation, 20. 14. H. 7. 2 37. H. 6. 17. Dier. 8. Eliz. 4. H. 7. 10. 22. E. 4 36. 40. E. 3. 41.

Est autem confirmatio quasi quædam ratihabitio, sufficit tamen quandoque per se, si etiam in se contineat donationem, vt si dicat quis, dedi & confirmaui, licet iuuari possit ex aliqua donatione præcedente.

Bracton. lib. 2. fol. 59. b.

But a Release, Confirmation, or Surrender, &c. cannot amount to a grant, &c. nor a Surrender to a Confirmation, or to a Release, &c. because these bee proper and peculiar manner of Conueyances, and are destined to a speciall end.

CItem en ascun cas cest verbe Dedi ou cest verbe Concessi; ad mesme leffect en substance, & vera a mesme lentent, come cest verbe Confirmaui. Sicome ieo sue disseisie dun carue de terre, & ieo face tiel fait; Sciant præsentes, &c. quod dedi a le disseisor, &c. vel quod concessi a le dit disseisor le dit carue, &c. & ieo deliuer tantsolement le fait a luy saunz ascun liuery de seisin del terre, cest vn bone confirmation, & auxy fort en ley, sicome il auoit en le fait ceo verbe confirmaui, &c.

ALso in some case this verbe *Dedi*, or this Verbe *Concessi* hath the same effect in substance, and shall enure to the same intent, as this verbe *Confirmaui*. As if I bee disseised of a Carue of Land, and I make such a Deed. *Sciant præsentes &c. quod dedi* to the Disseisor &c. or *quod concessi* to the said Disseisor, the said Carue, &c. and I deliuer only the Deed to him without any liuerie of seisin of the land, this is a good cõfirmation, & as strong in Law, as if there had beene in the Deed this verbe *Confirmaui*, &c.

(c) 32. E. 3. brief 291. Brooke tit. Confirm. 20. Vide le statute de Glouc. cap. 4. (f) 7. E. 3. 9.

CDedi & Concessi, &c. Here is implied that there be more words then Dedi and Concessi, that will amount to a Confirmation, as dimisi. (c) In ancient Statutes and in originall writs, as in the writ of Entrie in casu prouiso, in consimili casu ad Communem legem, and many others, this word dimisi is not applied only to a Lease for life but to a gift in taile, and to a Estate in fee. (f) Also if a man make a Lease to A. for yeares, and after by his Deed the Lessor Voluit quod haberet & teneret terram pro termino vitæ suæ. This is adiudged by this verbe (volo) to be a good Confirmation for terme of his life, Benigne enim faciendæ sunt interpretationes cartarum propter simplicitatem laicorum vt res magis valeat quam pereat.

Bracton.

And he to whom such a Deed comprehending Dedi, &c. is made, may plead it as a Grant, as a Release, or as a Confirmation at his election.

If a Parson and Ordinary make a Lease for yeares of the Glebe to the Patron, and the Pa-

1 H. 4. 6. Lib. 5. fol. 15. in Newcomens case.

patron by his Deed granteth it ouer, or if the Diſſeiſor granteth a Rent to the Diſſeiſee, and he by his Deed granteth it ouer, and after re-enter, in both theſe caſes one and the ſame words doe amount both to a Grant, and to a Confirmation in iudgement of Law of one and the ſame thing, ne res pereat. And ſo it is if a Diſſeiſor make a Leaſe for life, or a gift in taile, the remaynder to the Diſſeiſee in fee, the Diſſeiſee by his Deed granteth ouer the remaynder, the particular Tenant attorneth, the Diſſeiſee ſhall not enter vpon the Tenant for life, or in taile, for then he ſhould anoyd his owne grant, which amounted to a grant of the eſtate, and a Confirmation alſo.

Sect. 532.

¶ Item ſi ieo leſſa terre a vn home pur terme dans, per force de quel il eſt en poſſeſſion, &c. Et puis ieo face vn fait a luy, &c. Quod dedi & conceſſi, &c. le dit terre a auer pur terme de ſa vie, & deliuera a luy le fait, &c. donq; maintenant il ad eſtate en le terre pur terme de ſa vie.

ALſo if I let land to a man for tearme of yeares, by force whereof hee is in poſſeſſion, &c. and after I make a Deed to him &c. *Quod dedi & conceſſi, &c.* the ſaid land to haue for tearme of his life, and I deliuer to him the Deed, &c. then preſently he hath an eſtate in the Land for tearme of his life.

¶ Here is the firſt Caſe wherein the Confirmation and the Releaſe doe agree. And is euident and needeth no explication.

Section 533.

¶ Et ſi ieo die en le fait, a auer & tener a luy & a ſes heires de ſon corps engendres il ad eſtate en fee taile, & ſi ieo die en le fait, a auer & tener a luy & a ſes heires, il ad eſtate en fee ſimple, car ceo vera a luy per force de confirmation denlarger ſon eſtate.

AND if I ſay in the Deed, to haue and to hold to him and to his heires of his bodie ingendred, he hath an eſtate in fee taile. And if I ſay in the deed, to haue & to hold to him and to his heires, he hath an eſtate in fee ſimple. For this ſhall enure to him by force of the Confirmation to inlarge his eſtate.

¶ This alſo is euident and needeth no explication, ſauing that whenſoeuer a Confirmation doth inlarge and giue an eſtate of Inheritance, there ought to bee apt words (as Littleton here expreſſe them) vſed for the ſame.

Section 534.

¶ Item ſi hom ſoit diſſeiſie, et le diſſeiſor deuie ſeiſie, et ſon heire eſt eins per

ALſo if a man be diſſeiſed, & the diſſeiſor die ſeiſed, & his heire is in by diſcent,

¶ Quant al heire del diſſeiſor, &c. les tenements paſſont per voy de feoffment. For

the land shall euer passe from him that hath the state of the land in him. As if Cesty que vse and his Feoffees after the Statute of 1.R.3. and before the Statute of 27.H.8. cap. 10. had ioyned in a feoffment, it shall be the feoffment of the Feoffees, because the state of the land was in him.

21.H.7.34.b. Pl.Com.59.a. in Wimbishes case.

So it is if the Tenant for life, and he in the remainder or reuersion in fee ioyne in a feoffment by Deede, The Liuery of the freehold shall moue from the Lesse, and the inheritance from him in the reuersion or remainder, from each of them according to his estate. For it cannot be adiudged by Law, that the feoffment of Tenant for life doth drawe the reuersion or remainder out of the Lessor or him in remainder, or doth worke a wrong because they ioyned together.

Pl.Com.59.a. Pl.Com.140.in Brownings case. 2.H.5.7. 13.H.7.14. 13.E.4.4.a. 27.H.8.13. M.16 & 17.Eliz.339.

If there bee Tenant for life, the remainder in tayle, the remainder in tayle, &c. and Tenant for life and he in the remainder in tayle leuy a Fine, this is no discontinuance or deuesting of any estate in remainder, but each of them passe that which they haue power and authority to passe.

Lib.1.fo.76. Bredons case.

A. Tenant for life the remainder to B. for life, the remainder in tayle, the remainder to the right heires of B. A. and B ioyne in a Feoffment by Deed, albeit it may be said that this is the feoffment of A. and the Confirmation of B and consequently hee in the remainder in tayle cannot enter for the forfeiture during the life of B. Yet because B. ioyned in the Feoffment which was tortious to him in the remainder in taile, and is Particeps criminis, therefore they forfeited both their estates, and he in the remainder in taile might enter for the forfeiture. But if he in the reuersion in fee and Tenant for life ioyne in a Feoffment by paroll, this shall be (as some hold) first a surrender of the estate of Tenant for life, and then the feoffment of him in the Reuersion, for otherwise if the whole should passe from the Lesse then he in the reuersion might enter for the forfeiture, and euery mans act (Vt res magis valeat) shall be construed most strongly against himselfe.

17.Eliz.Dier.339.

discent, et puis le disseisee & lheire le disseisor font iointment vn fait a vn auter en fee et liuery de seisin sur ceo est fait (quant al heire le disseisor, que ensealast le fait) les tenemẽts passont et vont per mesme le fait p voy de feoffment, et quant al disseisee que ensealast mesme le fait, ceo ne vera sinon p voy de confirmation. Mes si le disseisee en cest cas port briefe dentre en l'Per et Cui enuers lalienee del heir le disseisor. Quære comẽt il pledra cel fait enuers l'demandant per voy de confirmation, &c. Et saches mon fits, q̃ est vn des pluis honorables, laudables, et profitables choses en nostre ley, de auer le science de bien pleder en actions reals et personals, et pur ceo ieo toy counsaile especialment de mitter ton courage et cure d ceo apprender.

and after the disseisee, and the heire of the disseisor make ioyntly a Deed to another in fee, and liuery of seisin is made vpon this, (As to the heire of the disseisor that sealed the deed) the tenemẽts doe passe and enure by the same deed by way of feoffment, and as to the disseisee who sealed the same Deed, this shall enure but by way of confirmation. But if the disseisee in this case brings a writ of entrie in the *Per* and *Cui* against the alienee of the heire of the disseisor. *Quere* how he shall plead this Deed against the demandant by way of confirmation, &c. And know my son that it is one of the most honorable, laudable & profitable things in our law to haue the science of well pleading in actions reals & personals, and therefore I counsaile thee especially to imply thy courage and care to learne this.

And it is to be obserued that Littleton here putteth a discent, so as the entrie of the Disseisee is not lawfull, for if the Disseisor and Disseisee ioyne in a Charter of feoffment, and enter into the land, and make Liuery, it shall be accounted the feoffment of the Disseisee, and the confirmation of the Disseisor. Quere

C *Quare coment il pledera ceſt fait, &c.* Yee may pleade the feoffment of the heire of the Diſſeiſor, and the Confirmation of the Diſſeiſee as it hath beene pleaded and allowed. Lib.1.fo.146.147. Maiewes caſe.

C *Et ſaches mon fits, que eſt vn de pluis honorable, &c.* Here is to be obſerued the excellency of good pleading, and Littletons graue aduice, that the ſtudent ſhould imploy his courage and care for the attaining thereof: which hee ſhall attaine vnto by three meanes; Firſt by reading, Secondly by obſeruation, and thirdly by vſe and exerciſe. For in antient time the Seriants and Appyentices of Law did drawe their owne pleadings, which made them good pleaders. And in this ſence Placitum may be deriued A Placendo, quia omnibus Placet. See my Preface to the 9. Bookes of my Reports.

Now ſeeing good pleading is ſo honourable and excellent, and that many a good cauſe is daily loſt for want of good and orderly pleading, it is neceſſary to ſet downe ſome fewe rules (amongſt many) of the ſame, to facilitate this learning, that is ſo highly commended to the ſtudious reader. For when I diligently conſider the courſe of our bookes of yeares and termes from the beginning of the raigne of E.3. I obſerue, that more iangling and queſtions growe vpon the manner of pleading, and exceptions to forme, then vpon the matter it ſelfe, and infinite Cauſes loſt or delayed for want of good pleading. Therefore it is a neceſſary part of a good common Lawyer to be a good Prothonotary. And now wee will performe our promiſe.

(a) Bracton, lib.5.fo.400. Britton, fo.41.a & 122. Fleta, lib.6.ca.35.36.&c. 40.E.3.9.b. 17.E.3 74. 8.E.3.5.& 9. 35.H.6.13.

The order of good pleading is to be obſerued, which being inuerted great preiudice may growe to the partie tending to the ſubuerſion of Law. Ordine placitandi ſeruato, ſeruatur & jus, &c.

First in good order of pleading a man muſt pleade to the iuriſdiction of the Court. Secondly to the perſon, and therein firſt to the perſon of the Plaintife, and then to the perſon of the Defendant. Thirdly to the Count. Fourthly to the Writ. Fiftly to the Action, &c. (a) which order and forme of pleading you ſhall reade in the ancient Authors agreeable to the Lawe at this day, and if the Defendant miſorder any of theſe, hee loſeth the benefit of the former.

(b) Pl.Com.fo.121.122. 3.E.4.21. Vid.lib.5.fo.120.121.

The Count muſt be agreeable and conforme to the Writ, the barre to the Count, &c. and the iudgement to the Count, for none of them muſt be narrower or broader than the other.

(c) Bracton, lib.2.fo.140.

A Count or Declaration, which anciently and yet is called Narratio ought to containe two things, (b) viz. Certainty and Verity, for that it is the foundation of the ſuite, whereunto the aduerſe party muſt anſwer, and whereupon the Court is to giue his iudgement: (c) Certa debet eſſe intentio & narratio, & certum fundamentum, & certa res quæ deducitur in judicium. But it muſt be vnderſtood that there be three kinde of Certainties; Firſt to a common intent, and that is ſufficient in a barre which is to defend the party and to excuſe him. (d) Secondly a certaine intent in generall, as in Counts, Replications, and other pleadings of the Plaintife, that is to conuince the Defendant, and ſo in Inditements, &c. Thirdly, a certaine intent in euery particular, as in Eſtoppells.

(d) Lon.1 caſe. Pl.Com.56. Wimbiſhaus caſe.

(e) He that pleadeth a plea in abatement of the Writ (which of ancient times was, and yet is called Breue) or a plea after the latter continuance ought to plead it certainly.

(e) 7.H.6.17. 32.H.6.12.15 Pl.Com.33.b.

(f) The ancient formes of Counts are to be duly obſerued, as Cum dimiſit, or Cum dedit, and not to ſay, that he was ſeiſed, and demiſed, &c. (And yet if he ſay ſo, it maketh not the Count vitious) (g) but in a barre replication or other kinde of pleading, the partie muſt alledge a ſeiſin in the Leſſor or Donor, and ancient formes of pleading are alſo to be obſerued.

(f) 34.H.6.48. 8.H.5.4.b. 21.E.4.52 5.E.3.15. 39.H.6.3. 10.H.6.2. 21.H.7.26.

(g) 48.E.3,8. 2.H.4.13. 6.H.4.2.b. 10.E.4.2. F.N.B. 156.c. 11.E.3 Aide 32. 9.H.6.59. 10.E.4.4.

(h) Counts, or ſuch as be in nature of Counts (as an Auowrie wherein the Defendant is an Actor) need not to be averred, but all other pleas in the Affirmative ought to be averred, Et hoc paratus eſt verificare, &c. but pleas merely in the Negative ought not to be averred, becauſe a negative cannot be proued.

(h) Pl.Com.81.11.H.4.8. 34.H.6.48. 19.R.2. Allen ſor le caſe 52. 22.E.3.19. 30.E.3.9.

(i) Where there is but one Tenant or one Defendant, he cannot haue two ſuch pleas, as each of them doe goe to the whole, but where there are diuers, each of them may pleade ſeuerall pleas which extend to the whole.

(i) 5.H.7.8. 6.E.4.2. 21.E.4.44. 27.H.8.4. 22.H.6. 17.E.4.7. 22.E.4.8.

(k) That which is alledged by way of conueyance or inducement to the ſubſtance of the matter need not to be ſo certainly alledged, as that which is the ſubſtance it ſelfe.

(k) Pl.Com 65.a.b & 100.376.& 410. 22.H.6.38 19.H.6.49. 37.H.6.14. 36.H.6.5. 21.E.4.54.

(l) Euery plea muſt be direct, and not by way of argument, or rehearſall.

(l) 11.H 6.15. 38.H.6.23. 42.Aſſ.3. 48.E.3.11. 4.E.4.12. 9.E.3.46.

(m) Where a matter of Record is the foundation or ground of the ſuite of the Plaintife, or of the ſubſtance of the plea, there it ought to be certainly and truly alledged, otherwiſe it is, where it is but conueyance. But the proceedings and ſentences in the Eccleſiaſticall Courts may be alledged ſummarily as that a Diuorce was had betweene ſuch parties, for ſuch a cauſe, and before ſuch a Iudge, and Concurrentibus his quæ in jure requiruntur, for the Iudge muſt be alledged, to the intent the Court may write to him if it be denied.

(m) 21.E.4.52. 35.H 6.35. 10.H.7.9.15. 11.H.7.8. 22.E.3.2. 34.H.6.27. 12.H.8.5.6. 7.E.4.32. 9.E.4.24. 8.E.4.31. 8.Aſſ.29. 5.E.4.7°. 3.E.4.1.

Good matter muſt be pleaded in good forme, in apt time, and in due order, or otherwiſe great aduantages may be loſt.

(n) Generall estates in Fee simple may be generally alledged, but the commencement of estates tatle, and other particular estates regularly must be shewed, vnlesse in some cases where they are alledged by way of inducement, and the life of Tenant in Tatle, or for life, ought to be averred.

(o) When any speciall and substantiall matter is alledged by either partie, that ought to be especially answered, and not to be passed over by a generall pleading.

(p) The Plea of euerie man shall be construed strongly against him that pleadeth it, for euerie man is presumed to make the best of his owne case: Ambiguum placitum interpretari debet contra proferentem

(q) Euerie Plea that a man pleadeth ought to be triable, for without triall the cause can receiue no end: Et expedit reipublicæ vt sit finis litium.

(r) The Tenant before his default saued, may plead all Pleas which proue the Writ abated, as death, &c. or matters apparant in the Writ, but no Plea, which proue it abateable, as taking of husband, &c.

(s) When a man is authorized to doe any thing by the Common Law, by Grant, Commission, Act of Parliament, or by Customs, he ought to pursue the substance and effect of the same accordingly.

(t) All necessarie circumstances implied by Law in the Plea need not to be expressed, as in the plea of a Feoffement of a Mannor Iniurie and Attornement are implied.

(u) When a Count, Barre, Replication, &c. is defective in respect of omission of some circumstance, as time, place, &c. there it may be made good by the plea of the aduerse party, but if it be insufficient in matter, it cannot be saued.

(w) Euerie man shall plead such pleas as are pertinent for him, according to the qualitie of his case, estate, or interest, as Disseisors, Tenants, Incumbents, Ordinaries, and the like.

(x) Surplusage shall neuer make the Plea vicious, but where it is contrariant to the matter before.

(y) That which is apparant to the Court by necessarie collection out of the Record need not to be averred.

(a) A man is bound to performe all the couenants in an Indenture: if all the couenants be in the Affirmatiue, he may generally plead performance of all, but if any be in the negatiue, so many he must plead specially (for a negatiue cannot be performed) and to the rest generally. (b) So if any be in the disiunctiue, he must shew which of them he hath performed. So if any are to be done of Record, he must shew that specially, and cannot involue that in generall pleading.

(c) In many cases the Law doth allow generall pleading, for anoyding of prolixitie and tediousnesse, and that the particular shall come on the other side.

(d) Pleadings which amount to the generall Issue are not to bee allowed, but the generall Issue is to be entred, Vi. Sect. 10. 485. 499.

(e) Euerie plea ought to haue his proper Conclusion, as a Plea to the Writ to conclude to the Writ, a Plea in Barre to conclude to the Action, an Estoppel to relie vpon the Estoppels, Et sic de similibus.

(f) When the Conclusion of a Plea, Et issint, Et sic, is in the affirmatiue, it shal not waiue the speciall matter: for there the special matter is the substance & foundation of the conclusion, and affirmed by the same. But where the conclusion is in the negatiue, there the speciall matter regularly is waiued.

(g) Whensoeuer speciall matter is pleaded, and the Conclusion (Et sic) is to the poynt of the Writ or Action, the speciall matter is waiued.

The names of legall Records are, a Writ, a Count, a Barre, a Replication, a Reioynder, a Rebutter, a Surrebutter, &c.

(h) New and subtill deuices and inuentions of pleading ought not to alter any Principls of Law, whereof you haue heard plentifully before.

The Count or Declaration is an exposition of the Writ, and addeth time, place, and other necessarie circumstances, that the same may be triable, and any imperfection in the Count doth abate the Writ.

Pleadings are diuided into Barres, Replications, Reioynders, Surreioynders, Rebutters, and Surrebutters &c. They are words of Art, and are called Barres, Barræ, so called because it barreth the Plaintife of his Action. Replicationes, à Replicando; Reiunctiones, à Reiungendo, Rebutter, of the French word Rebouter, i. à Repellendo, To put backe or anoyd, and so of Surrebutter.

But each partie must take heed of the ordering of the matter of his pleading, lest his Replication depart from his Count, or his Reioynder from his Barre, & sic de cæteris.

(i) In antient writers a Bar is called Exceptio peremptoria, a Replication was then called Replicatio, as now it is: a Reioynder, Triplicatio; a Surreioynder, Quadriplicatio, & sic vlterius in infinitum.

(a) 35.H.6.35. 21.E.4.51. 9.H.4.5. 19.H.6.73. 5.E.4 12. 10.E.4.18. 13.H.7.18. 36.H.8.Pleading. Br.160.
(o) Vi.Sect.193. 3.H.6.47 41.E.3.22. 9.Ass.9. 22.Ass.45. 2.E.3.42. 13.E.3.Am.Demesne 15. 20.E.3.ib.45. 7.H.7.8.li.10 Fol.91. Lib.11.fol.10.
(p) 3.H.7.3. 26.Ass.10. 14.H.4.4.b. 27.H.6.8.b. 21.H.6.Debt 43. 7.H.6.24. 31. 35.H.6.48. 47.E.3.14. Pl.Com 46.a. Li 3.58.59. Line.Col.case.
(q) 22 E.4.40 2.3. 20.E.4.10. 21.E.4.35. 22.H.6.50.
(r) 40.E.3.40. 43.46. 41.E.3.2. 18.E.3.16. 26.E.3.68. 42.E.3.3. 10.46 6.E.3.37. 8.E.3.20. 10.E.3.60 14.H.4.15. 12.E.4.1. 38.E.3.28. 7.H.7.3.
(s) 10.E.4.3. 27.H.6.8. 8.H.7. 13. 9.H.7.26. 37.H.6.1. 27.H.8.13. 21.H.7.25. 11.H.4.33. Pl Com.79. 16.E.4.10. 1.H.7.33. 20.H.7.1. 6.E.4.4.5. 21.E.4.54. 22.H.6.47. 11.H.6.8. 25.E.3.50.b. 23.Ass.7. 2.Eliz.Dier.184.
(t) Pl.Com.149 b.& 105 a 37.H.6.38.
(u) 18.E.4.16.b. 22.E.4.2.76. 5.H.7.13. 38.H 6.17.18.19. 18.E 3.34. Pl.Com.229.b. Lib.8.133.Turners.case. (w) 5 H.7.34. 5.E.3.26. 22.H.6.28.
(x) 19.H.6.30.32. Pl.Com.232.b.et fol.502. per Dier & 503.
(y) 13.H 4.17.10.E.4.18. 33.H.6.54. 35 H.6.30. 21.H.7.32. Brack.li.3 fo.154 Pl.Co 87.b.26.H.6 Gard.58
a) 2.H.7.15.4 H.7.12.10.H 7.12.13.H.7.19.26.H.8.5.b
(b) Li.8.fo.133.Turners case & fo.120.Benhams case. Lib.9.25.61. Li.10.100.
(c) 12.H.8.6.7. 2.R.3 17. 14.E.4.7.9.E.4.19.
(d) 44.E.3.2.34.H.6.5. 10.H.6.6 & 17. 12.E.4.11. 14.14.H.8.24.7 E.3.12. 17.E.3.44.
(e) 18 H.6.33.22.H.6.53. 36.H.6.17. 38.H.6.18.25. 5.E.3.15.16. 22.Ass.33. 2.El.Dy.184.
(f) Pl.Com 14.15.2.E.4.18 39.E.3.14.32. 33.8.E.3. 57 Quer.simp.25. 18.H.6.30 7.4.18.28.Ass.14. 24.E.3. 48 22.E.3.33.38.H.6.25. 32.H 6.14 19.H.8.7. 27.H.8.12.b.
(g) 7.E.4.26. 11.H.7.4. 12 H.7.6.33.H.6.9.37. 43.
(h) V.Sect.485.
(i) Brack.li.5.fo.400. Flet.li.6.ca 37.

A departure in pleading is sayd to be when the second Plea containeth matter not pursuant to his former, and which fortifieth not the same, and thereupon it is called Deceſſus, because he departeth from his former Plea, and therefore whensoeuer the Reioynder (taking one example for all) containeth matter subsequent to the matter of the Barre, and not fortifying the same, this is regularly a departure, because it leaueth the former, and goeth to another matter. As if in an Aſſise the tenant plead a diſcent from his father, & giueth a colour, the Demandant intituleth himselfe by a Feoffement from the Tenant himselfe, the Plaintife cannot say, That that Feoffement was vpon Condition, and to shew the Condition broken, for that should bee a cleare departure from his Barre, because it containeth matter subsequent. But in an Aſſiſe, if the Tenant pleadeth in Barre, That I.S. was seiſed and infeoffed him, &c. and the plaintife sheweth, That he himselfe was seiſed in Fee, vntill by I.S disseiſed, who infeoffed the Tenant, and he re-entred, the Defendant may plead a releaſe of the Plaintife to I.S. for this doth fortifie the Barre.

39.E.3.13 b.39.H.6.15. 6.H.7.8. 21.H.6.32. Pl.Com 105.1.Mar.Dier 95 28.H.8.ibidem.31.

6.H.7.8.3.H.5.Departure.2

If a man plead performance of Couenants, and the Plaintife replie, That hee did not such an act according to his Couenant, the Defendant saith, That he offered to doe it, and the plaintife refuſed it, this is a departure because the matter is not pursuant, for it is one thing, to do a thing, and another to offer to doe it, and the other refuſed to doe it: therefore that should haue bene pleaded in the former Plea. Vide & caue in a Quare impedit, what Plea shall bee safely pleaded in primo placito.

8.El.Dy 253.23.El.Di.271 6.E.3.3.40.E.3.32.43.E.3. 11.1.E.4.4 18.E.4.24. 5.H.7.17 8 H.6.11.33 H.6 14.

When a man in his former Plea pleadeth an eſtate made by the Common Law, in the second Plea regularly he shall not make it good by an Act of Parliament. So when in his former Plea he intituleth himselfe generally by the Common Law, in his second Plea hee shall not enable himselfe by a Custome, but should haue pleaded it first.

Pl Com.105.b Fulwoods case. 21.H.7.25. 27.H 8.3. 21.H.7.17.37.H.6.5. 38.H.6.25.

If a man plead an eſtate generally, (as for example a Feoffement in Fee) hee in his second Plea shall not maintain it by other matter tant amount in Law, as by a Diſſeiſin and Releaſe, or by a Leaſe and Releaſe, or a gift in Taile in Barre, and in the second Plea a Recouerie in bane, for this is a departure: but he in that case shall count of a gift, and maintaine it in his Replication by a Recouerie in value, because he could haue no other Count.

21.H.7.25.1.E.4.4. 3.H.7.5.7.H.7.2.

See more of this matter, where the Plaintife varying from time or place alledged in the count of Actions tranſitorie, shall commit no departure.

V.Sect.485.

The Plea that containes duplicitie or multiplicitie of diſtinct matter to one & the same thing, whereunto seuerall answers (admitting each of them to be good) are required, is not allowable in Law. And this rule you see extendeth to Pleas perpetuall or peremptorie, and not to Pleas dilatorie, for in their time and place a man may plead diuers of them, and hereof antient writers speake notably; Sicut Actor vna Actione debet experiri ſi ſibi Curia durante, ſic oportet tenentem vna exceptione, dum tamen peremptoria (quod de dilatorijs non eſt tenendum) quia ſi liceret pluribus vti exceptionibus peremptorijs ſimul & ſemel ſicut fieri poterit in dilatorijs ſic ſequeretur, quod ſi in probatione vnius defecerit ad aliam probandam poſſit habere recurſum quod non eſt permiſſibile, non magis quam aliquem ſe defendere duobus baculis in duello, cum vnus tantum ſufficiat.

Tl.Com.139.142.

* Flet.li.6.ca 35. Bract li.5 fo 400.

But where the Tenant or Defendant may plead a generall Iſſue, there vpon the generall Iſſue pleaded, he may giue in euidence as many diſtinct matters to barre the Action or right of the Demandant or Plaintife, as he can.

A ſpeciall Verdict may containe double or treble matter, and therefore in those cases the Tenant or Defendant may either make choyce of one matter, and to plead it to barre the Demandant or Plaintife, or to plead the generall Iſſue, and to take aduantage of all, or hee may plead to part one of the Pleas in Barre, and to another part another Plea, and his concluſion of his Plea shall auoyd double neſſe, and hereby neither the Court nor the Iurie is so much inuegled, as if one Plea should containe diuers diſtinct matters. And if the Tenant make choyce of one Plea in Barre, and that be found against him, yet he may resort to an Action of an higher nature, and take aduantage of any other matter. And the Law in this poynt is by them that vnderſtand not the reaſon thereof miſliked, saying, Nemo prohibetur pluribus defenſionibus vti.

17.E.3.73.

39.H.6.27.

And it is worthie of obſeruation, That in the raignes of Edward the second, Edward the firſt, and bywards, the Pleadings were plaine & sencible, but nothing curious, euermore hauing chiefe respect to matter, and not to formes of words, and were often holpen with a Queſitum eſt, and then the queſtions moued by the Court, and the answers by the parties were also entred into the Rolle. But euen in those dayes the formes of the Regiſter of originall writs were then punctually obſerued, and matters in Law exactly debated and reſolued, and where any great difficultie was, then it was reſolued by all the Iudges and Sages of the Law (who were for matters in Law called Concilium Regis) and their aſſemblie and reſolution was entred into the Rolle. As for example, In the great case in a Quare impedit, betweene the King and the Prior of Worceſter, concerning an Appropriation, whether it were a Mortmaine, the Record saith, Ad quem diem venit prædictus Prior per Attornatum ſuum, &c. Et examina-

Hil 32.E.1.Cor.Reg.in ſuo Rotul.

examinatis & intellectis recordo & processu coram toto concilio tam thesaurario & Baronibus de Scaccario, quam Cancellario, ac etiam Iusticiarijs de vtroque Banco inspecta causa, pro qua, pro Domino Rege dicunt, quod ad ipsum Regem pertinet præsentare, &c. consideratum est, &c. For in those dayes, though the Chancellor and Treasurer were for the most part men of the church, yet were they expert and learned in the Lawes of the Realme:

As for example, in the time of the Conqueror, Egelricus Episcopus Cicestrensis vir antiquissimus, & in Legibus sapientissimus, as elsewhere I haue sayd.

(a) Ockam fo.17. (a) Nigellus Episcopus Eliensis Hen.1. Thesaurarius in temporibus suis incomparabilem habuit Scaccarij Scientiam, & de eadem scripsit optime.

(b) Pasch.5.R.2. Cor.Rege. (b) Henricus Cant. Episcopus, H. Dunelm Episcopus, Willielmus Eliensis Episcopus. G. Roffens. Episcopus.

(c) 1.H.3.Rot.pat. Bract.sape. (c) Martinus de Pateshul Clericus Decanus dini Pauli Londõ constitutus fuit capitalis Iustic' de Banco, quia in legibus huius Regni peritissimus.

(d) Bract.sepe. (d) Willus de Raleigh Clericus Iusticiarius Domini Regis.

(e) 8.E.3.31. (e) Iohannes Episcopus Carliensis tempore H.3.

Robertus Passelewe Epus Cicistrensis tempore H.3.

(f) Rot.pat.24.H.3. (f) Robertus de Lexintonio Clericus constitutus capitalis Iustic' de Banco.

(g) Liber eius de Legibus extat script. temp.E.1. (g) Iohannes Britton Episcopus Hereford.

(h) Rot.Pas.17.E.2. (h) Henricus de Stanton clericus, constitutus fuit capitalis Iusticiarius ad placita, with many others. And so were diuers and many of the Nobilitie, who when matters of great difficultie were brought into the vpper house of Parliament by writ of Error, Idornement, or other Parliamentarie course, did by the assistance of the reuerend Iudges, who euer attended in that Court, iudge and determine the same as by former and antient Records, and specially by the sayd Record of 5.R.1. doe manifestly appeare, and therefore the Lords of Parliament were called for those purposes, Concilium Regis, and like to the afore mentioned record there be verie many.

In the raigne of Edward the third, Pleadings grew to perfection both without lamenesse, and curiositie, for then the Iudges and Professors of the Law were excellently learned, and then knowledge of the law flourished, the Serieants of the Law, &c. drew their owne pleadings, and therfore truly said that reuerent iustice Thirning, in the raigne of H.4. that in the time of Ed.3. the Law was in a higher degree than it had beene any time before; for (saith he) before that time the manner of Pleading was but feeble in comparison of that it was afterward in the raigne of the same King.

12.H.4.3.

In the time of Henrie the first the Iudges gaue a quicker eare to Exceptions to Pleadings, than either their Predecessors did, or the Iudges in the raigne of Edward the fourth, when our Author flourished, or since that time haue done, giuing no way to nice Exceptions, so long as the substance of the matter were sufficiently shewed. And as in the raigne of King Edward the third, by an Act of Parliament * it is prouided, That Counts or Declarations should not abate so long as the matter of the Action be fully shewed in the Declaration and writ, so since our Author wrote, in the raigne of Queene Elizabeth prouision is made, That after Demurrer the Iudges shall giue iudgement according to the right of the cause and matter in Law, without regarding any imperfection, defect, or want of forme in any writ, Returne, Plaint, Declaration, or other pleading or course of proceeding whatsoeuer, except such as the partie demurring shall specially shew. In which Act, Appeales and Indictments of Felony, Murder, or Treason concerning mans life, and the forfeiture of his lands and goods, are excepted. An excellent and a profitable Law concurring with the wisedom and iudgment of antient and latter times, that haue disalowed curious & nice exceptions tending to the ouerthrow or delay of iustice, apices iuris non sunt iura: yet it is good for a learned professor to make all things plain & perfect, & not to trust to the after aid or amendment, by force of any stat. lest his Clients cause matcheth not therewith; and as it is in Physicke for the health of a mans bodie, so it is in remedies for the safetie of a mans cause. In Law, Præstat cautela quam medela.

* 36.E.3.ca.15.46.E.3.21. Dy.299. Li 8.fo.161. Li.10.fo.131.

But now let vs returne to our Author.

Section 535.536.537.

CItem si soyent Seignior et Tenant, mesque le seignior confirma lestate que le tenãt ad en les tenements, vncore le Seigniorie entierment demurt a le

ALso if there be lord & tenant, albeit the Lord confirme the estate which the Tenaunt hath in the Tenements, yet the Seigniorie remaineth entire to the

Li.10.fo.88.Pl.Com.431.

ale Sir come il fuit adeuant. Lord as it was before.

Sect. 536.

CEN meſme le manner eſt, ſi home ad vn rent charge hors de certein terre, & il confirma eſtate que le tenant ad en la terre, vncore demurt a le confirmor le rent charge.

IN the ſame manner is it if a man hath a Rent charge out of certaine Land, and hee confirme the eſtate which the Tenant hath in the land, yet the Rent charge remayneth to the Confirmor.

Sect. 537.

CEN meſme le manner eſt, ſi vn home ad common de pasture en auter terre, ſil confirma eſtate de le tenant de la terre, rien departer de luy de ſon common, mes ceo nient obſtant le common demurt a luy come fuit adeuant.

IN the ſame manner it is if a man hath common of paſture in other land, if he confirme the eſtate of the Tenant of the Land nothing ſhall paſſe from him of his Common, but notwithſtanding this, the Common ſhall remayne to him as it was before.

HEre is the firt Caſe wherein the Releaſe and Confirmation doe differ, for by the releaſe of the Seigniory, Rent charge or Common are extinct. And ſo theſe three Sections be evident and need no explication, ſaving that ſome doe gather vpon theſe two laſt Sections and the next enſuing, that a man cannot abridge a Rent charge or common Paſture by a Confirmation as he may doe a Rent Service in reſpect of the priuity betweene the Lord and Tenant, ſo as (ſay they) a tenure may bee abridged by a Confirmation, but not a Rent charge or Common: and therefore Littleton beginneth the next Section with an Adverbe aduerſatiue, viz. (mes but) &c. But a man may releaſe part of his Rent charge, or Common, &c.

Sect. 538.

CMES ſi ſoient Seignior & tenant, le quel tenãt tient de ſon Seignior per le ſeruice de fealtie & 20. s. ô rent, ſi le Seignior per ſon fait confirma leſtate le tenant, a tener per 12. d. ou per vn denier, ou per vn maile, en ceſt caſe le tenant eſt diſcharge

BVt if there be Lord and Tenant which Tenant holdeth of his Lord by the ſeruice of fealtie, and 20. ſhillings rent, if the Lord by his Deed confirme the eſtate of the Tenant to hold by 12. pence or by a penny, or by a halfe penny. In this caſe the Tenant is diſcharged of all the

CAND the reaſon wherefore no ſeruice of another cannot be reſerued vpon the Confirmation is, becauſe as long as the ſtate of the Land continueth it cannot by the Confirmation of the Lord bee charged with any new ſeruice. So as it is evident that the Lord by his Confirmation may diminiſh and abridge the ſeruices, but to reſerue vpon the Confirmation new ſeruices he cannot, ſo long as the former eſtate in the Tenancie continueth. And as where a Confirmation doth

28.E.3.92.93 26.Aſſ.37. 6.Eliz.Dier 230.b.7.E.4. 25.a. 21.E.4.62. per Briap. 10.E.3.tit.annuis 100.

inlarge an eſtate in land, there ought to be priuitie, as hath beene ſaid, ſo regularly where a Confirmation doth abridge ſeruices there ought to be priuity alſo.

de touts les auters ſeruices, & ne rendra rien a le Seignior, forſque ceo q̄ eſt compriſe deins meſme le Confirmation.

other Seruices, and ſhall render nothing to the Lord, but that which is compriſed in the ſame Confirmation.

And therefore here Littleton putteth his caſe of Lord and Tenant betweene whom there is priuitie. And therefore if there be Lord, Meſne and Tenant the Lord cannot confirme the eſtate of the Tenant to hold of him by leſſer ſeruices, but this is void, for that there is no priuity betweene them, and a Confirmation cannot make ſuch an alteration of Tenures.

7.E.3.19. 22.E.3.18.6.

And the caſe in 4.E.3. maketh nothing againſt this opinion, for there the caſe in ſubſtance is this, Iohn de Bonuile held certaine Lands of Ralfe Vernon, and before the Statute of Quia emptores terrarum, leuied a Fine of the ſame lands to the Abbot of Cogſall and his Succeſſors to hold of the chiefe Lord (which was Ralfe Vernon) by the ſeruices due and accuſtomed. Ralfe Vernon made a Charter to the ſaid Abbot in theſe words. Conceſſi etiam eidem Abbati & ſucceſſoribus ſuis relaxaui & quietum clamaui totum ius, &c. quod habeo, vel potero habere in omnibus tenementis quæ idem Abbas habet de dono Iohannis de Bonuile. Tenendum de me & hæredibus meis in puram & perpetuam Eleemoſinam. And adiudged that it was a good tenure in Frankalmoigne, which caſe proueth nothing that the Lord Paramount may by his Confirmation to the Tenant perauaile extinct the Meſnaltie (as it is abridged by Maſter Fitzherbert in the title of Confirmation, Plac. 1.) for the immediate Lord did there make the ſaid Charter, and not any Lord Paramount. (And therefore it is euer good to reſte vpon the Booke at large, for many times Compendia ſunt diſpendia, and Melius eſt petere fontes, quam ſectari riuolos.) And of this opinion was Maſter Plowden vpon good aduiſement and conſideration.

4.E.3.19. 9.E.3.1. 12.E.4. 11. 16.E.3. fines 4. 6.Eliz. Dier 230.

And here is the ſeuenth Caſe wherein the Releaſe and Confirmation doth agree, for if there be Lord and Tenant by Fealtie and twentie ſhillings rent, the Lord may releaſe all his right in the Seignior or in the Tenancie ſauing fealty and ten ſhillings rent, but he cannot ſaue a new kind of ſeruice, for he may aſwell abridge his ſeruices vpon a Releaſe as vpon a Confirmation. And as there is required priuitie when the Lord abridgeth the ſeruices of his Tenant by his Confirmation: ſo muſt there be alſo, when the Lord by his Releaſe abridgeth the ſeruices of his Tenant. And therefore the Lord Paramount cannot releaſe to the Tenant perauaile ſauing to him part of his ſeruices, but the ſauing in that caſe is void.

Briton fol.57.177.40.E.3. 21.47.48.18.E.3.26. 50.Aſſ.6.14.H.4.8.

¶ *Et rendra rien a ſon Seignior forſque ceo que eſt compriſe, &c.* which words are thus to be vnderſtood, that the Tenant ſhall not render any more Rent or annuall Seruice to the Lord then is contained in the Deed, but other things notwithſtanding the ſaid Confirmation the Tenant ſhall yeeld to the Lord, as reliefe, ayde pur file marier, and ayde pur faire fitz Chiualer, becauſe theſe are incidents to the tenure that remayne, and ſhall not be diſcharged without ſpeciall words, by the generall words of all other Actions, Seruices and Demands. And ſo if a man hold of me by Knights Seruice, Rent, Suite, &c. and I releaſe to him all my right in the Seignior, excepting the Tenure by Knights Seruice, or confirme his eſtate to hold of me by Knights Seruice only for all manner of Seruices, Exactions, and Demands. Yet ſhall the Lord haue Ward, Marriage, Reliefe, Ayde pur file marier, & pur faire fitz Chiualer, for theſe be incidents to the tenure that remayns. But it is holden that if a man make a gift in tatle by Deed reſeruing two ſhillings rent a luy & ſes heires pro omnibus & omnimodis ſeruitijs exactionibus ſecularibus & cunctis demandis, if the Donee die his heire of full age, the Donor ſhall haue no reliefe, becauſe in the originall Deed of the gift in tayle it is expreſſely limited, that by the Seruice of two ſhillings Rent he ſhall be quite of all Demands, (and Reliefe lieth in Demand) and by reaſon of thoſe words ſay they there cannot any Reliefe become due, but ſome doe hold the contrary in that caſe.

13.R.2.tit.allowrie 89. Note 4 Burn Fitzh.

Sect. 539.

¶ Mes ſi le Seignior voile per fait de confirmation, que le tenant en ceſt cas doit tender

BVt if the Lord will by his Deed of Confirmation that the Tenant in this caſe ſhall yeeld

render a luy vn eſperuer, ou vn roſe annualment a tiel feaſt, &c. eſt confirmation eſt voide, pur ceo que il reſerua a luy vn nouel choſe que ne fuit parcel de ſes ſeruices deuant la confirmation, et iſſint le ſeignior poit bien per tiel confirmation abridger les ſeruices, per queux le tenant tient de luy, mes il ne poit reſerver a luy nouel ſeruices.

to him a Hawke or a Roſe yearely at ſuch a feaſt, &c. this confirmation is voyde, becauſe he reſerueth to him a new thing which was not parcell of his ſeruices before the confirmation, And ſo the Lord may well by ſuch confirmation abridge the ſeruices by which the tenant holdeth of him, but hee cannot reſerue to him new ſeruices.

¶ This vpon that which hath beene ſaid before in the next preceding Section is euident, and needeth no further explication.

Sect. 540.

¶ Item ſi ſoit ſeignior, meſne, et tenant, et le tenant eſt vn Abbe, que tient de meſne per certaine ſeruice annualment, le quel nad aſcun cauſe dauer acquitãce enuers ſon meſne, pur porter briefe de Meſne, &c. en ceſt cas, ſi le meſne confirma leſtate q̃ labbe ad en la terre, a auer et tener la terre a luy et a ſes ſucceſſors en frankalmoigne, &c. en ceſt cas le confirmation eſt bone, et adonques labbe tiendra de l'meſne en frankalmoigne. Et la cauſe eſt pur ceo que nul nouel ſeruice eſt reſerue car touts les ſeruices eſpecialment ſpecifies ſont extincts, et nul rent eſt reſerue al meſne forſque que labbe tient de luy la terre, et ceo fiſt il deuant la confirmation, car celuy que tient en frankalmoigne, ne doit faire aſcun corporall ſeruice, iſſint que per tiel confirmation il appiert, que le meſne ne reſerua a luy aſcun nouel ſeruice, mes que les tenements ſerront tenus de luy come ceo fuit deuant. Et en ceſt caſe

ALſo, if there be Lord, Meſne, and tenant, and the tenant is an Abbot that holdeth of the meſne by certaine ſeruices yearely, the which hath no cauſe to haue acquitance againſt his meſne for to bring a writ of Meſne, &c. in this caſe if the meſne confirme the eſtate that the Abbot hath in the land, to haue and to hold the land vnto him & his ſucceſſors in frankalmoigne, or free almes, &c. in this caſe this confirmation is good, and then the Abbot holdeth of the meſne in frankalmoigne: and the cauſe is for that no new ſeruice is reſerued, for all the ſeruices ſpecially ſpecified bee extinct, and no rent is reſerued to the meſne, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to doe no bodily ſeruice, ſo that by ſuch confirmation it appeareth the meſne ſhall not reſerue vnto him no new ſeruice, but that the lands ſhall bee holden of him as it was before, and in this

caſe labbe auera vn briefe de meſne, ſil ſoit diſtreiñ en ſon default per force de l dit confirmation, lou per caſe il ne puiſſoit auer vn briefe adeuant, &c.

caſe the Abbot ſhall haue a writ of Meſne, if hee bee diſtrained in his default, by force of the ſaid confirmation, where percaſe hee might not haue ſuch a writ before.

4.E.3.19. 22.E.3.15.b. the Lord Wakes caſe. 10.E.3.5. 15.E.3. Confirmat.8. 4.E.3.19.20. F.N.B.136.b.&g. 4.E.4.35 31.E.1. Meſne 55. 11.E.3. Auowrie 100. 22 E.3.18.b 30.E.3.13. 16.H.3. Auowrie 243.

HEre our Author hauing ſeene the former Bookes putteth his caſe that the meſne maketh the Confirmation to hold in Frankalmoigne and not the Lord paramount

¶ *Et en ceſt caſe labbe auera breife de meſne.* Here is to be noted, that vpon a Confirmation to hold in Frealmoigne there lyeth a writ of Meſne, albeit the cauſe of acquitall begin after the Seignior. And ſo vpon ſuch a Confirmation the Tenant ſhall haue Contra formam feoffamenti.

Sect. 541.

45.E.3.10. 30.H.6. 21.haw.39. Regiſtrum 102. 1.H.6.cap.5.

HEre is to bee obſerued a diuerſity betweene the cuſtody of the body of a ward within age, and a right of inheritance in the body of a villeine in groſſe, for a man may be put out of poſſeſſion of the cuſtodie of his ward but not of his villeine in groſſe no more then a man can be of his priſoner which he hath taken in war.

Brooke tit. Property 28.

Alſo of things that are in grant, as Rents, Commons, and the like, it is at the election of the party whether hee will be diſſeiſed of them or no, as ſhall bee ſaid after in his proper place. But of a villeine in groſſe he cannot at all be diſſeiſed. (a) Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel iuris vnde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit ſit in poſſeſſione.

(a) Bracton lib.2.59.b. 24 E.3.tit. diſcont.15. 42.E.3.18. 40.E.3.17. 43.E.3.4 9.E.4.38. Dier 10.Eliz. Grenchesaſe.

And materially doth Littleton put his caſe of a Villeine in groſſe, for of a villeine regardant to a Mannor, the Lord may be put out of poſſeſſion, for by putting him out of poſſeſſion of the Mannor which is the principall, hee may likewiſe bee put out of poſſeſſion of the villeine regardant which is but acceſſory. And by the recouery of the Mannor the villeine is recouered. But if another doth take away my villeine in groſſe or regardant he gaineth no poſſeſſion of him. And this doth well appeare by the writ of Natiuo habendo, for that writ is not brought againſt any perſon in certaine (becauſe no man can

¶ Item ſi ieo ſue ſeiſie dun villein come de villeine en gros, et vn auter luy prent hors de ma poſſeſſion, enclaimãt luy deſtre ſon villein la ou il nauoit aſcun droit dauer luy come ſon villein, et puis ieo confirma a luy leſtate que il ad ẽ mon villeine, ceſt confirmation ſemble void, pur ceo que nul poit auer poſſeſſion de vn home come de villeiñ en groſſe, ſi non celuy que ad droit de luy auer come ſon villein en groſſe. Et iſſint entant que celuy a que le confirmation fuit fait, ne fuit ſeiſie de luy come de ſon villeine a le temps de confirmation fait, tiel confirmation eſt void.

ALſo if I be ſeiſed of a villeine as of a villeine in groſſe, and another taketh him out of my poſſeſſion, clayming him to bee his villein there where hee hath no right to haue him as his villeine, and after I confirme to him the eſtate which hee hath in my villeine, this confirmation ſeemeth to be voide, for that none may haue poſſeſſion of a man as of a villeine in groſſe, but he which hath right to haue him as his villeine in groſſe. And ſo in aſmuch as hee to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of the confirmation made, ſuch confirmation is voide.

can gaine the poſſeſſion of him. But the writ is to this effect; Rex vic' Salutem, præcipimus tibi quod iuſte & ſine dilatione habere facias A.B. natiuum & fugitiuum ſuum, &c. vbicunque inuentus fuerit, &c. & prohibemus ſuper forisfacturam noſtram ne quis eum iniuſte detineat, ſo as detaine him one may, but to poſſeſſe himſelfe of him, and to diſpoſſeſſe the Lord he cannot.

And if a man might haue beene diſpoſſeſſed of a Villeine in groſſe, or of a Villeine regardant (vnleſſe he be diſpoſſeſſed of the Mannor alſo, as hath beene ſaid) the Law would haue giuen a remedy againſt the wrong doer, as the Law doth in the caſe of a Ward.

Now ſeeing it doth appeare by our Bookes (a) (and by Littleton himſelfe by implication ſpeaking only of a villeine in groſſe) that if a man be diſſeiſed of the Mannor whereunto the Villeine is regardant, he is out of poſſeſſion of his villeine, and ſo an Aduowſon appendant, and the like. Hereby (Littleton putting his caſe of a Villeine in groſſe) and by diuers Authorities a point controuerted in our bookes (*) is reſolued, viz. that by the grant of the Mannor without ſaying Cum pertinentiis, the Villeine Regardant, Aduowſon appendant and the like doe paſſe, for if the Diſſeiſor ſhall gaine them as incidents to the Mannor, whoſe eſtate is wrongfull, A multo fortiori the Feoffee, who commeth to his eſtate by lawfull conueyance, ſhall haue them as incidents. But where the entrie of the diſſeiſee is lawfull, he may ſeiſe the Villeine regardant, or preſent to the Aduowſon, &c. before he enter into the Mannor, otherwiſe it is where his entrie is not lawfull, and ſo are the ancient Authors (b) to be intended.

(a) *Bracton, fo. 243. Britton, fo. 126.*

(*) *9.E.4.38. 3.H.4.15. 18.E.3.44. 16.E.3. Quer. Imp 146. 9.R.2. Treſp. 255. 19.H.6.33. 21.H.6.9. 33.H.6.33. 5.H 7.36. 38. 10.H.7.9. F N.B.33.9. 22.H.6.33. per Moyle. 30.E.3.31. 39.E.3.21. 43.E.3.12.*

(b) *Bracton, fo.242.243. Britton, fo.126. Fleta.ant.*

Sect. 542.

CMes ẽ ceſt cas, ſi tiels parols fueront en le fait, &c. Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum, **ceſt bone, mes ceo vmra per force et voy de grant et nemy per voy de confirmation, &c.**

BVt in this caſe if theſe words were in the deed, &c. *Sciatis me dediſſe & conceßiſſe tali, &c. talem villanum meum*, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation, &c.

CHere it is to be obſerued that a man hath an inheritance in a Villeine, wherof the wife of the Lord ſhall be endowed as hath beene ſaid, for in him a man may haue an eſtate in Fee or fee taile for life or yeares. And therefore Littleton is here to bee vnderſtood, that in the Grant there were theſe words (his heires) or elſe nothing paſſed but for life, as of other things that lye in Grant.

2.H.6. F.N.B.77.a.b.

24.E.3. Diſcont. 16.

Sect. 543.

CE Taſcun foits ceux verbs Dedi & conceſſi, **vſeront per voy dextinguiſhment del choſe done ou grant, ſicome vn tenant tient de ſon ſeignior per certeine rent, et le ſeignior granta per ſon fait a le tenant et a ſes heires le rent, &c, ceo vſera a le teſt per voy dextinguiſhment, car per cel grant le rent eſt extinct, &c.**

AND ſometimes theſe verbes, *Dedi & conceßi*, ſhall enure by way of extinguiſhment of the thing giuen or granted, as if a tenãt hold of his Lord by certaine rent, & the Lord grant by his deed to the tenant and his heires the rent, &c. this ſhall enure to the tenant by way of extinguiſhment, for by this grant the rent is extinct, &c.

And this grant of the rent ſhall enure by way of releaſe.

3.E.12. Aſſ.7.

Section 544.

¶ En meſme le maner eſt, lou vn ad vn rent charge hors de certaine terre, et il graunta al tenant de la terre le Rent charge &c. Et la cauſe eſt, pur ceo que appiert per les parols del grant, que le voluit le donor eſt, que le tenant auera le rent, &c. et entant que il ne puit auer ne perceiuer aſcun rent hors de ſon terre demeſne, pur ceo le fait ſerra intendue et pris pur le pluis aduãtage et auaile pur le tenaunt que puit eſte pris, et ceo eſt per voy dextinguiſhment.

IN the ſame manner it is where one hath a Rent Charge out of certaine Land, and hee graunt to the Tenaunt of the Land the Rent Charge, &c. And the reaſon is, for that it appeareth by the words of the Grant, That the will of the Donor is, That the Tenaunt ſhall haue the rent, &c. and in as much as hee cannot haue or perceiue any rent out of his owne Land, therefore the Deed ſhal be intended and taken for the moſt aduantage, and auaile for the tenant, that it may be taken, and this is by way of extinguiſhment.

34.H.6. ¶ But if the Grantee of the Rent charge granteth it to the Tenaunt of the Land and a ſtranger, it ſhall be extinguiſhed but for the moitie: and ſo it is of a Seigniorie.

Sect. 545.

¶ Item ſi ieo leſſa Terre a vn home pur terme dans et puis ieo confirma ſon eſtate ſans pluis poro mitter en le fait, per cel il nad pluis greinder eſtate que pur terme dans, ſicome il auoit adeuant.

ALſo if I let Land to a man for terme of yeares, and after I confirm his eſtate, without putting more words in the Deed, by this he hath no greater eſtate than for terme of yeares, as hee had before.

Sect. 546.

¶ Mes ſi ieo releſſa a luy mon droit que ieo aye en le terre ſans plus parols mitter en le fait, il ad eſtate de franketenement. Iſſint poyes entend mon fits diuers grands diuerſities pertenter Releaſes et confirmations.

BVt If I releaſe to him all my right which I haue in the Land, without putting more words in the Deed, hee hath an eſtate of Freehold. So thou mayſt vnderſtand (my ſonne) diuers great diuerſities betweene Releaſes and Confirmations.

In theſe two Sections is the ſeuenth caſe wherein a Releaſe and Confirmation do differ.

Sect.

Sect. 547.

¶ Item ſi ieo eſteant deins age leſſa terre a vn auť pur terme de xx. ans, et puis il graunte l' terre a vn auter p̄ time de x. ans, iſſint il granta forſque parcel de ſon terme, en ceſt caſe quant ieo ſue de pleine age, ſi ieo releſſa al Grauntee de mon leſſee, &c. ceſt releaſe eſt voyd, pur ceo que il ny ad alcun priuitie perenter luy et moy, &c. Mes ſi ieo confirme ſon eſtate, donque ceſt confirmation eſt bone. Mes ſi mon Leſſee graunta tout ſon eſtať a vn auť, donq̄s mō releaſe fait a l' grātee ē bone et effectual.

ALſo if I being within age, let land to another for terme of xx. yeres, and after he granteth the land to another for term of x. yeres, ſo hee graunteth but parcell of his terme: In this caſe when I am of full age, if I releaſe to the Grantee of my Leſſee, &c. this Releaſe is voyd, becauſe there is no priuitie betweene him and me, &c. but if I confirme his eſtate, then this confirmation is good. But if my leſſee grant all his eſtate to another, then my Releaſe made to the Grantee is good and effectuall.

¶ HEre are two things to be obſerued: First, That the Leaſe of an Enfant in this caſe is not voyd but voydable. Secondly, this is the eighth caſe put by Littleton, wherein the Releaſe and Confirmation doe differ. 7.E.4 6.b. 18.E.4.2. 9.H.7.24.

Sect. 548.

¶ Item ſi home granta vn rēt charge iſſuant hors de ſon terre a vn auter pur terme de ſon vie, et puis il confirma ſon eſtate en le dit rent, a auer et tener a luy en fee taile ou en fee ſimple, ceſt Confirmation eſt voyd, quant a enlarger ſon eſtate, pur ceo que celuy que confirme nauoit aſcun reuerſion en le rent.

ALſo if a man graunt a Rent-charge iſſuing out of his Land to another for terme of his life, and after hee confirmeth his eſtate in the ſayd rent, To haue and to hold to him in fee taile or in fee ſimple, this Confirmation is voyd as to inlarge his eſtate, becauſe hee that confirmeth hath not any reuerſion in the rent.

¶ HEere the Diuerſitie is apparant, betweene a rent newly created, and a Rent in eſſe: which needeth no explication. Only this is to be obſerued, That Littleton intendeth his Deed of Confirmation not to containe any clauſe of Diſtreſſe, for otherwiſe, as to the Confirmation the Deed is voyd, but the clauſe of Diſtreſſe doth amount to a new grant, as in the Chapter of Rents hath beene ſayd. 21.E.3.47. 15.E.4.8.b. Pl.Com. 35.8.H.4.19.

Section 549.

¶ Mes ſi home ſoit ſeiſie en fee de Rent ſeruice ou de Rent

BVt if a man be ſeiſed in fee of a Rent Seruice, or Rent Charge,

rent charge, et il grant le rent a vn auter pur terme de vie, et le tenant atturna, et puis il confirma lestate de le grantee en fee taile, ou en fee simple, cest confirmation est bone, quant a enlarger son estate, solonq; les parols le confirmation, pur ceo q̃ celuy q̃ confirmast al tẽps de cõfirmation, auoit vn reuersion del rent.

and he grant the rent to another for life, and the tenant attorneth, and after hee confirmeth the estate of the grantee in fee taile, or in fee simple, this confirmation is good, as to enlarge his estate according to the words of the confirmation, for that he which confirmed at the time of confirmation had a reuersion of the rent.

HEre is the eight case wherein the Release and Confirmation doth agree, and it is here to be obserued that to the grant of the estate for life Littleton doth put an attornement, because it is requisite, but to the Confirmation to the Grantee of the rent to enlarge his estate, there is none necessary, and therefore he putteth none; but of this more shall be said in the chapter of Attornement, Sect.556.575.

Sect. 550.

MEs en cas auantdit lou home graunt vn rent charge a vn auter pur terme de vie, ſil voile q̃ le grantee aueroit estate en le taile, ou en fee, il conuient que le fait de grant del rent charge pur terme d̃ vie, soit surrender ou cancell, & donques d̃ faire vn nouel fait dautiel rent charge. A auer & perceiuer a le grantee en le taile, ou en fee, &c. Ex paucis plurima concipit ingenium.

BVt in the case aforesaid where a man grant a rent charge to another for terme of life, if he will that the Grantee should haue an estate in taile, or in fee, it behoueth that the deed of grant of the rent charge for terme of life be surrendred or cancelled, & then to make a new Deed of the like rent charge. To haue & perceiue to the Grantee in tayle or in fee, &c. *Ex paucis plurima concipit ingenium.*

Vide Sect.636.

Surrender ou cancell. Note by cancellation of the Deed the rent which lyeth only in grant ceaseth (as here it appeareth) aswell as by the Surrender.

And the reason wherefore (if the Grantor make a new grant of the rent, and not enlarge it by way of Confirmation as Littleton must be intended) the Deed should be surrendred or cancelled, is least the Grantor should be doubly charged, viz. with the old grant for life, and with the new grant in fee, or as hath beene said, the Grantor may grant to the Grantee for life and his heires, that he and his heires shall distreine for the rent, &c. and this shall amount to a new grant, and yet amount to no double charge, whereof you may see before in the Chapter of Rents.

Chap.10. Of Attornement. Sect.551.

Attornement est, come si soit Sir a tenant, et Sir voile grant p̄ son fait les services ď s̄ a vn auť per terme dans, ou per terme de vie, ou en taile, ou en fee, il couient que l' tenant atturna al grauntee en le vie le grantor, p force & vertue del grant, ou autrement le grant est void. Et atturnement est nul auter en effect forsq̄ quant le t̄ ad oye del grant fait p̄ s̄ Sir, q̄ meisme le tenant agreea per parol a le dit grant, sicome adire a le grauntee, ieo moy agree a le grant fait a vous, &c. ou ieo sue bien content de le graunt fait a vous, mes le pluis common atturnemẽt est, adire, Sir, ieo atturna a vous per force del dit graunt, ou ieo deueigne vr̄e tenant, &c. ou liuer al grantee vn denier, ou vn maile ou vn farthing per voy dattornement.

Attornemẽt is, as if there be Lord and tenant, and the Lord will grant by his Deed the seruices of his Tenant to another for terme of yeares, or for tearme of life, or in taile, or in fee, the tenant must attorne to the Grantee in the life of the Grantor by force and vertue of the grant or otherwise the grant is void. And Attornement is no other in effect, but when the Tenant hath heard of the grant made by his Lord that the same tenant do agree by word to the said grant, as to say to the Grantee, I agree to the Grant made to you, &c. or I am well content with the grant made to you, but the most common Attornement is, to say, Sir, I attorne to you by force of the said Grant, or I become your Tenant, &c. or to deliuer to the Grantee a pennie, or a halfe pennie, or a farthing by way of Attornement.

Bracton lib.2.fol.81. Britton c.105.b.176.& 177. Fleta lib.3.cap.6.

Attornemẽt is an agreement of the Tenant to the grant of the Seignior, or of a rent, or of the Done in tayle or tenant for life or yeares, to a grant of a Reuersion or Remaynder made to another. It is an ancient word of art, and in the Common Law signifieth a torning or attorning from one to another, wee vse also Attornamentum as a Latine word, and attornare to attorne. And so Bracton (a) vseth it, Item videndum est si Dominus attornare possit alicui homagium & seruitium tenentis sui contra voluntatem ipsius tenentis, & videtur quod non

(a) *Bracton lib.2.fol.81.b. Fleta, Britton vbi supra.*

And the reason why an Attornement is requisite is yelded in olde Bookes to bee, Si Dominus attornare posset seruitium tenentis contra voluntatem tenentis tale sequeretur inconueniens quod posset eum subiugare capitali inimico suo, & per quod teneretur Sacramentum fidelitatis facere ei qui eum damnificare intenderet.

Bracton lib.2.fol.81.b. Britton vbi supra.

Il couient que le tenant attorna al grantee en la vie del grantor, &c. And so must hee also in the life of the Grantee, and this is vnderstood of a grant by Deed. And the reason hereof is for that euery grant must take effect as to the substance thereof in the life both of the Grantor and the Grantee. And in this case if the Grantor dieth before Attornement, the Seignior, Rent, Reuersion, or Remaynder discend to his heire, and therefore after his decease

Vide Litt.fol.128. 11.H.7.19.

Lib.1 fol.104.105. Shelley's case.

40.Ass 19.34.H.6.7. 20.H.6.7.

decease the Attornement commeth too late, so likewise if the Grantee dieth before Attornement, an Attornement to the heire is void, for nothing discended to him, and if hee should take, hee should take it as a Purchasor, where the heires were added but as words of limitation of the estate, and not to take as Purchasors.

But if the grant were by fine then albeit the Conusor or Conusee dyeth, yet the grant is good. For by fine levied the state doth passe to the Conusee and his heires, and the Attornement to the Conusee or his heires at any time to make pryuitie to distraine is sufficient. But all this is to be taken as Littleton understood it, viz. of such grants as have their operation by the Common Law. For since Littleton wrote if a fine be levied of a Seignory, &c. to another to the vse of a third person and his heires, he and his heires shall distraine without any Attornement, because he is in by the Statute of 27.H.8.cap.10. by transferring of the state to the vse, and so he is in by act in Law

34.H.6.7. 20.H.6.7.

Bracton lib.2.fol.81.82. acc.

Lib.6.fol 68. Sir Moyles Finches Case.

And so it is and for the same cause, if a man at this day by Deed indented and inrolled according to the Statute bargaineth and selleth a Seignory, &c. to another, the Seignory shall passe to him without any Attornement, and so it is of a Rent, a Reuersion, and a Remainder. So as the Law is much changed, and the ancient priuiledge of Tenants, Donees, and Lessees much altered concerning Attornement since Littleton wrote.

27.H.8.cap 16. Vide Sect.584.

But if the Conusee of a fine before any Attornement by Deed indented and inrolled, bargaineth and selleth the Seignory to another, the bargainee shall not distreine because the bargainor could not distreine. Et sic de similibus, for nemo potest plus iuris ad alium transferre quam ipse habet. Vide Sect.149. where vpon a recouery, the Recoueror shall distreine and auow without Attornement.

Lib.6.vbi supra. Vide Sect.149.

A grant to the King or by the King to another is good without Attornement by his Prerogatiue.

49.E.3.4. 34.H.6.8. 6.E.4.13.

¶ *Attornement est nul auter en effect, &c.* It is to be vnderstood that there be two kind of Attornements, viz. an Attornement in deed or expresse, and an Attornement in Law or implicite. Of Attornement expresse or indeed Littleton speaketh here, and of Attornement in Law he speaketh after in this Chapter. And to both these kinds of Attornements there is an incident inseparable, that is, that the Tenant hath notice of the grant for an Attornement being (an agreement or consent to the grant, &c.) he cannot agree or consent to that which he knoweth not. And the vsuall pleading is, to which grant the Tenant attorned. And therefore if a Wayly of a Mannor who vsed to receiue the rents of the Tenants purchase the Mannor, and the Tenants hauing no notice of the purchase continue the payment of the Rents to him, this is no Attornement. So if the Lord leuie a fine of the Seignory, and by fine take backe an estate in fee, the Tenant continueth the payment of the rent to the first Conusor without notice of the fines, this is no Attornement. But it is to be knowne that there be two kind of notices, viz. a notice in deed or expresse, whereof Littleton here speaketh, when he sayth, that the Tenant agreeth to the grant, and a notice in Law or implyed, whereof Littleton hereafter speaketh in this Chapter.

Lib.2.fol.67.b.Tookers case. 13.Eliz. Dier 302. Tookers case vbi supra.

Lib.2. Tookers case vbi supra.

¶ *Del grant fait per son Seignior.* Here is to bee seene when the thing granted is altered what becommeth of the Attornement.

If there be Lord, Meine and Tenant, and the Meine grant ouer his Meinaltie by Deed, the Lord releaseth to the Tenant whereby the Meinalty is extinct, and there is a rent by surplusage, an Attornement to the grant of this rent secke is good, although the qualitie of that part of the rent is altered, because it is altered by act in Law.

If a reuersion of two Acres be granted by Deed, and the Lessee before Attornement leuie a fine of one of them, and the Tenant attorne, this is good for the other Acre.

(a) If the Reuersion be granted of three Acres, and the Lessee agree to the said grant for one Acre this is good for all three, and so it is of an Attornement in Law if the reuersion of three Acres be granted, and the Lessee surrender one of the Acres to the Grantee, this Attornement in a barre shall be good for the whole reuersion of the three Acres according to the Grant.

(a) 18.E.3.tit. variance 63. 22.E.3.18. Tookers case, vbi supra.

¶ *Et le tenant agree.* Hereafter in this Chapter Littleton doth teach what manner of Tenant shall attorne.

¶ *Agree per parol, &c.* And so hee may and more safely by his Deed in writing.

¶ *Sicome adire a le grantee, &c.* Here is to be seene to what manner of Grantees the Attornement is good. Regularly the Attornement must bee according to the grant either expresly, or implyedly. Of the first Littleton hath here spoken.

19.H.6.3. Tookers case. Vbi supra.

Im-

Implyedly, as if a reuerſion be granted to two by Deed, and the Leſſee attorne to one of them according to the grant, this Attornement is good, but not to veſt the reuerſion only in him to whom Attornement is made, but it ſhall enure to both the Grantees, for that is according to the grant, and for that it cannot veſt the reuerſion only in him to whom the Attornement is made. And ſo it is if one Grantee dieth, the Attornement to the Suruiuor is good. *Tookers caſe vbi ſupra. 11.H.7.13.*

If the Lord grant by Deed his Seigniory to A. for life, the remaynder to B. in fee, A. dyeth and then the Tenant attorne to B, this Attornement is void, becauſe it is not according to the grant, for then B ſhould haue a remainder without any particular eſtate. *20.H.6.7.*

If a reuerſion be granted to a man and a woman, they are to haue moities in Law, but if they entermarrie and then Attornement is had, they ſhall haue no moities, (and yet by the purport of the grant they are to haue moities.) becauſe it is by act in Law. *Tookers caſe vbi ſupra. Pl.Com.187.405.*

If a Feme grant a reuerſion to a man in fee, and marry with the Grantee, this is a good Attornement in Law to the husband. *2.R.2.tit.Attornement 8.*

If a reuerſion be granted by Deed to the vſe of I.S. and the Leſſee hearing the Deed read, or hauing notice of the contents thereof attorne to Ceſty que vſe, this is an implyed Attornement to the Grantee.

If a reuerſion be granted for life, the remaynder in tayle, the remaynder in fee, the Attornement to the Grantee for life ſhall enure to them in the remaynder to veſt the remaynder in them. *Temps E.1.Attorn.23. 18.E.47.*

And in thoſe caſes if the Tenant ſhould ſay, that I doe attorne to the Grantee for life, but that it ſhall not benefit any of them in remaynder after his death, yet the Attornement is good to them all, for hauing attorned to the Tenant for life, the Law (which hee cannot controll) doth veſt all the remaynder. And of this more ſhall be ſaid hereafter in this Chapter.

Littleton here putteth fiue examples of an expreſſe Attornement, but of them the laſt is the beſt, becauſe the care is not only a witneſſe of the words, but the eye of the deliuery of the penny, &c. and ſo there is dictum & factum. And any other words which import an agreement or aſſent to the grant doe amount to an Attornement. And albeit theſe fiue expreſſe Attornements be all ſet downe by Littleton, to be made to the perſon of the Grantee, (b) yet an Attornement in the abſence of the Grantee is ſufficient, for if he doth agree to the grant eyther in his preſence or in his abſence, it is ſufficient. (b) *Lib.2.fol 68.69. Tookers caſe. 28 H 8.tit.Attornment Br.40.*

Sect. 552.

¶ Item ſi le Seignior graunt le ſeruice de ſon tenant a vn home, & puis per vn fait portant vn darreine date, il granta meſmes les ſeruices a vn auter, & le tenant attorne a le ſecond grantee, ore le dit grauntee ad les ſeruices, & cõmt que apres le Tenant voile attorner a le primer grauntee, ceſt clerement void, &c.

ALſo if the Lord grant the ſeruice of his Tenant to one man, and after by his Deed bearing a later date hee grant the ſame ſeruices to another, and the Tenant attorne to the ſecond Grantee, now the ſaid Grantee hath the ſeruices, and albeit afterwards the Tenant will attorne to the firſt Grantee, this is cleerely void, &c.

¶ HEre it is to bee obſerued, that Littl. expreſſeth not what eſtate is granted, and very materially, for if the former grant were in fee, and the latter grant were for life, and the tenant doth firſt attorne to the ſecond Grantee he cannot after attorne to the firſt grantee to make the fee ſimple paſſe, for that ſhould not be according to the grãt, but in that caſe the Attornement to the firſt is countermanded. And ſo it is if a Reuerſion expectant vpon an eſtate for life be granted to another in fee, and after the Grantor before Attornement confirms the eſtate of the Leſſee in tayle, the Attornement to the Grantee for the fee ſimple is void.

In the ſame manner, if a Reuerſion vpon an eſtate for yeares be granted in fee, and the Leſſor confirme the eſtate of the Leſſee for life he cannot afterwards attorne.

If a Feme sole maketh a Lease for life or yeares reserving a rent, and granteth the Reuersion in fee, and taketh husband, this is a Countermand of the Attornement.

11.H.7.19. 2.R.2 vbi supra.

Where our Author putteth his case of the whole reuersion, if two Coparceners bee of a reuersion, and one of them granteth her moity by Fine, the Conusee shall haue a Quid iuris clamat for the moitie.

P.3.Eliz. Bendloes.

If in the case that our Author here putteth of seuerall grantees, if the Tenant Attorne to both of them, the Attornement is voide, because it is not according to the Grant. If a reuersion be granted for life, and after it is granted to the same Grantee for yeares and the Lessee attorneth to both Grants it is voide for the incertaintie; A multo fortiori, if the Lord by one Deede grant his Seigniory to I. Bishop of London and to his heires, and by another Deede to I. Bishop of London and to his Successors, and the Tenant attorne to both grants, the Attornement is voide, for albeit the Grantee be but one, yet he hath seuerall capacities, and the grants are seuerall, and the Attornement is not according to either of the Grants.

11.H.7.12.

But if A grant the reuersion of Blacke acre or white acre, and the Lessee attorne to the Grant, and after the Grantee maketh his election, this Attornement is good, for albeit the state was incertaine, yet he attorned to the Grant in such sort, as it was made, and so note a diuersitie betweene one grant and seuerall grants, and obserue in this case an Attornement good in expectation, and yet nothing passed at the time of the Attornement but by the election subsequent.

Section 553.

Temps.E.1.Attornement. 48.E.3.15.

HEre it is to bee obserued that when a man maketh a feoffment of a Mannor the seruices doe not passe but remaine in the Feoffor vntill the Freeholders doe attorne, and when they doe attorne the Attornment shall haue relation to some purpose and not to other. For albeit the Attornment be made many yeares after the feoffment, yet it shall haue relation to make it passe out of the Feoffor Ab initio euen by the Liuery vpon the feoffment, but not to charge the Tenants with any meane arrerages or for waste in the meane time, or the like.

If a reuersion of Land be granted to an Alien by Deed, and before Attornement the Alien is made Denizen, and then the Attornment is made, the King vpon office found shall haue the land: for as to the estate betweene the parties it passeth by the Deede Ab initio.

Item si hom soit seisie de vn mannor, quel mannor est parcel en demesne, et parcel en seruice, sil voile aliener cel mannor a vn auter, il conuient que per force del alienation, que touts les tenants q̃ teignont del alienor come de son manor, attornerent al alienee, ou autermẽt les seruices demurront continualment en la lienor, forprise tenants a volunt, car il ne besoigne que tenants a volunt attornent sur tiel alienation, &c.

ALso if a man bee seised of a mannor, which mannor is parcell in demesne, and parcell in seruice, if hee will alien this mannor to another, it behooueth that by force of the alienation, all the tenants which hold of the alienor as of his mannor doe attorne to the alienee, or otherwise the seruices remaine continually in the alienor, sauing the tenants at will, for it needeth not that tenants at will doe attorne vpon such alienation, &c.

Pasch.5.E.3. Coram Rege. Suffex in Thesaur. 21.E.3.47. 34.E.3.Double plea 24. 42.Ass p.6. 43.Ass p.20. 30.E.3.29.E.3. 26.E.3. Per quæ seruicia 21. 8.H.4.16. 12.H.4. 20.H.6.7. 35.H.6. 9.E.4.33. 13.H.7.14.a. 1.H.7.31. 4.&6.Attornement, Br.30.

Also if a man plead a feoffment of a Mannor hee needs not pleade an Attornement of the Tenants, but (if it be materiall) it must be denied or pleaded of the other side.

And vpon consideration had of all the bookes touching this point whether the seruices of the Freeholders doe passe, wherein there haue beene three seuerall opinions, viz. some haue holden that the seruices doe passe in the right by the Liuery as parcell of the Mannor, but not to auow without Attornement as in the case of the Fine. And others haue holden, that they both passe in right and in possession to distreine without Attornement. And the third opinion is, that in this case the said seruices passe neither in possession nor in right, but vntill Attornement remaine

remains continually in the Alienor as Littleton here holdeth. And so it was resolued Pasch. 15. Eliz. betweene Brasbitch and Barwell according to the opinion of our Author. And I neuer yet knew any of Littletons cases (albeit I haue knowne many of them) to bee brought in question, but in the end the Iudges concurred with our Author.

Vid. Hill. 14. Eliz. Rot. 508. in Communi banco.

And where our Author speaketh of the Attornement of the Freeholders, if the Lord make a Lease for yeares or for life of a Mannor, and the Freeholders attorne to the Lessee, if after the reuersion of the Mannor be granted, the Attornement of the Lessee for yeares or life shall binde the Freeholders, for by their former Attornement, they haue put the Attornement into the mouth of the Lesse.

9. E. 2. tit. Attornement 18. 19. E. 2. Ibid. 19. 21. E. 3. 47. 5. H. 5. 12. b. Vid. Litt. Sect. 549. & 556.

¶ *Forspriſe tenant a volunt, &c.* Here is implied Tenant at will or by coppy of Court Rolle according to the custome of the Mannor, so as the Freehold and inheritance both of lands in the hands of Tenant at will by the Common Law or by Custome, shall passe both in right and in possession without any Attornement.

Sect. 554.

¶ Item ſi ſoient ſñr et tenant, et le tenant leſſa la terre a vn auter pur terme de vie, ou dona la terre en le taile ſauant le reuerſion a luy, &c. ſi le Seignior en tiel cas granta ſon ſeigniory a vn auter, il couient q celuy en le reuerſion atturna al grauntee, et nemy le tenant a terme de vie, ou le tenant en l' taile, pur ceo que en ceſt cas celuy en le reuerſion eſt tenant al Seignior, & nemy le tenant a terme de vie, ne le tenant en le tayle.

ALſo if there bee Lord and tenant, & the tenant letteth the land to another for term of life, or giueth the land in taile ſauing the reuerſion to himſelfe, &c. if the Lord in ſuch caſe grant his Seigniory to another, it behoueth that hee in the reuerſion attorne to the grantee, and not the tenant for terme of life, or the Tenant in taile, becauſe that in this caſe he in the reuerſion is tenant to the Lord, and not the tenant for terme of life, nor the tenant in taile.

¶ For it is a maxime in Law, that no man ſhall attorne to any grant of any Seigniory, Rent ſeruice, Reuerſion or Remainder, but hee that is immediatly priuie to the Grantor, and becauſe in this caſe there is no priuitie betweene the Lord and the Tenant for life, or Donee in taile, but only betweene the Lord and him in the reuerſion, for in this caſe the Attornement of him in the Reuerſion only is good.

¶ *Sauant le reuerſion a luy, &c.* That is to ſay, without limitation of any remainder ouer, and this is but to make his opinion plaine, as to the point that he putteth it.

Section 555.

¶ En meſme le maner eſt, lou ſont ſeigniour, meſne, et tenant, ſi le Seigniour voile granter les ſeruices del meſne, coment que il ne fait aſcun mention en ſon grant del meſne, vncore il couient que le meſne atturna, &c. et nemy le tenant pera-

¶ IN the ſame manner is it where there are Lord, Meſne and Tenant, if the Lord will grant the ſeruices of the Meſne, albeit hee maketh no mention in his grant of the Meſne, yet the Meſne ought to attorne, &c. and not the Tenant perauaile, &c.

perauaile,&c. pur ceo q̄ le meſne eſt tenant a luy,&c. for that the Meſne is Tenaunt vnto him,&c.

This ſtandeth vpon the ſame reaſon that the next precedent caſe did.

Section 556.

THere is to be obſerued a diuerſitie betweene a Rent ſeruice and a Rent charge, or a Rent ſecke; for as to the Rent ſeruice, no man (as hath beene ſayd) can attorne, but he that is priuie; ſo in caſe of a Rent charge it behoueth that the Tenaunt of the Freehold doth attorne to the Grantee, without reſpect of any priuitie. And therefore the Diſſeiſor onely in the caſe of a grant of a Rent charge, ſhall attorne, becauſe he is (as Littleton ſaith) tenant of the Freehold, but in caſe of a grant of a Rent ſeruice, the Attornement of the Diſſeiſee ſufficeth.

If there be Lord and Tenant by homage, fealtie, and rent, the Tenant is diſſeiſed, the Lord granteth the rent to another, the Diſſeiſee attorneth, this is voyd: but if hee had graunted ouer his whole Seigniorie, the Attornement had beene good, and the reaſon of this diuerſitie is heere giuen by our Author, for that when the rent was graunted onely, it paſſed as a Rent ſecke, and conſequently the Diſſeiſor being Terre-Tenant, muſt attorne. But when the Seigniorie is granted, then the Diſſeiſee in reſpect of the priuitie may attorne.

21.H.6.9.i.

CMes auterm̄t eſt, lou certaine terre eſt charge dun Rent charge, ou Rent ſeck, car en tiel caſe ſi celuy que ad le rent charg̃ ceo grant a vn auter, il couient q̄ l' tenant del franktenement atturna al Grantee, pur ceo que le franktenement eſt charg̃ oue le rent, &c. et en rent charge nul auowrie doit eſtre fait ſur aſcun perſon pur le diſtreſſe priſe, &c. mes il auowera le priſe bone et droiturel, come en terres ou tenements iſſint charges a ſon diſtreſſe, &c.

BVt otherwiſe it is where certain lād is charged with a Rent charge or Rent ſecke, for in ſuch caſe if he which hath the Rent charge grant this to another, it behoueth that the Tenaunt of the freehold attorn to the Grātee, for that the Freehold is charged with the rent, &c. And in a Rent charge no Auowrie ought to be made vpon any perſon for the diſtreſſe taken, &c. but hee ſhall auow the priſel to bee good and rightfull, as in lands or Tenements ſo charged with his diſtreſſe, &c.

CCouient que le Tenant del Franktenement, &c. And therefore if the Tenant of the land charged with a Rent charge or a Rent ſecke, make a leaſe for life, and hee that hath the Rent charge or Rent ſecke granteth it ouer, the Tenant for life ſhall attorne, for he is Tenant of the Freehold, according to the expreſſe ſaying of our Author, and (as hath been ſayd) there needeth no priuitie.

And it was holden by Dyer chiefe Juſtice of the Court of Common Pleas, and Mounſon Juſtice, in the argument of Bracebridges caſe aboueſayd, & not denied, that if he that hath a rent charge granteth it ouer for life, & the tenant of the Land attorn therunto, & after he granteth the reuerſion of the Rent charge, that the Grantee for life may attorne alone. And that theſe words of Littleton are to bee vnderſtood when a Rent charge or Rent ſecke is granted in poſſeſſion: And therewith agreeth 46.E.3. where it appeareth, That the Quid juris clamat in that caſe, did lie againſt the Grantee for life

46.E.3.27.2 H.6 9. Vi.Lit.Sect. 549.& 553.

A man maketh a leaſe for life, and after grants to A. a Rent charge out of the reuerſion, A. granteth the rent ouer, hee in the reuerſion muſt attorne, and not the Tenant of the freehold, for that the Freehold is not charged with the rent, for a Releaſe made to him by the Grantee doth not extinguiſh the rent. And Littleton is to be vnderſtood, that the Tenant of the Free-

hold

hold muſt attorne when the Freehold is charged.

¶ *Et en Rent charge nul Auowrie doit eſte fait ſur aſcun perſon, &c.* This is the reaſon that Littleton giueth of the difference betweene the Rent ſeruice and the Rent charge. Now it may be ſayd, That this reaſon is taken away by the Statute of 21.H.8. for by that Statute the Lord needs not auow for any rent or ſeruice vpon any perſon in certaine, and then by Littletons reaſon there needeth no priuitie to the attornement of a ſeigniorie, for (ſay they) Ceſſante cauſa vel ratione legis ceſſat lex. As at the Common Law no auowry was grantable of a ſtranger to an Auowrie: becauſe the Auowrie was made of a certaine perſon, but now the Auowrie being made by the ſayd Act of 21.H.8. vpon no perſon, therefore the reaſon of the Law being changed, the Law it ſelfe is alſo changed, and conſequently in an Auowrie, according to that Act, ayd ſhall be granted of any man, and the like in many other caſes, which caſe is granted to be good Law: but albeit the Lord (as hath beene ſayd) may take benefit of the Statute, yet may he auow ſtill at his election vpon the perſon of his Tenaunt. Alſo albeit the manner of the Auowrie be altered, yet the priuitie (which is the true cauſe of the ſayd difference) remaineth ſtill as to an Attornement.

21.H.8.cap.19. Vid.Sect.454.

27.H.8.4.b.

Rent charge, &c. It is to be obſerued, to what kind of Inheritances being granted, an Attornement is requiſite. And in this Chapter Littleton ſpeaketh of fiue: Firſt, of a Seigniorie, Rent ſeruice, &c. Secondly, of a Rent charge. Thirdly, of a Rent ſecke. And hereafter in this Chapter of two more, viz. of a Reuerſion and Remainder of Lands; for the Tenant ſhall neuer need to attorne but where there is Tenure, attendance, remainder, or payment of a Rent out of land. And therefore if an Annuitie, Common of paſture, Common of Eſtouers, or the like, be granted for life or yeares, &c. the reuerſion may be granted without any Attornement, and albeit ſometimes in ſome of theſe caſes or the like, an Attornement be pleaded, yet it is ſurpluſage, and more than needeth, becauſe in none of them there is any Tenure, Attendance, Remainder, or payment out of land.

21.H.7.1.

1.H.5.1.37. Aſſ.14.36. Aſſ. pl.3. 31.H.8.tit. Attorn. ment. Br.59.

Sect. 557.

¶ Item ſi ſoit Seignior et tenant, et le tenant leſſa ſon tenement a vn auter p̄ time d vie, le remainder a vn auter en fee, et puis le Seignior granta les ſeruices a vn auter, &c. et le tenit a terme de vie attorna, ceo eſt aſſets bone, pur ceo que le Tenant a terme de vie eſt tenaunt en ceſt caſe al ſeignior, &c. et celuy en le remainder ne poit eſtre dit tenāt al ſeignior, qānt a cel entēt forſque aps la mort le tenant a t̄me de vie, vncore en ceſt caſe ſi celuy en l'remainder muſt ſans hr̄e, le ſeignior auera le remainder p voy deſcheate, pur ceo que com̄t que l'ſeignior en tiel cas couient dauower ſur le tenant a terme de vie, &c. vncore tout lentier tenement quant a touts les eſtates d franktenement, ou d fee ſimpl', ou auterment, &c. en tiel cas ſont enſemble tenus d le ſeignior, &c.

¶ Mes

ALſo if there be Lord and Tenant, and the tenant letteth his tenement to another for term of life, the remainder to another in fee, and after the Lord grant the ſeruices to another, &c, and the Tenant for life attorne, this is good enough, for that the Tenaunt for life is Tenaunt in this caſe to the Lord, &c. and he in the remainder cannot be ſaid to be tenant to the Lord, as to this entent, vntill after the death of the tenant for life; yet in this caſe if hee in the remainder dieth without heire, the Lord ſhall haue the remainder by way of Eſcheat, becauſe that albeit the lord in ſuch caſe ought to auowe vpon the tenant for life, &c. yet the whole entire Tenement, as to all the eſtates of the Freehold or of Fee ſimple, or otherwiſe, &c. in ſuch caſe are together holden of the Lord, &c.

¶ * Mes nemy de faire Auowrie sur eux touts ensemble. M.3.H.6.

¶ * But not to make Auowrie vpon them all together. M.3. H.6.

15.E.3. Attorn.10. 12.E.4.4 18.H.6.2. 9.E.2 tit. Attorn.18. 18.E.4.7. Temps E.1 Attorn.22. Vi.Sect.580.

¶ *Et le Tenant a terme de vie attorna, &c.* For he that is (as hath beene sayd) prime and immediately Tenant to the Lord, must attorne: and that is in this case, The Tenant for life, and so of the other side if a Seigniorie be granted to one for life, the remainder to another in fee, the Attornment to the Tenant for life is an Attornment to the remainder also; vnlesse it be that they in the remainder ought to haue acquitall, or other priuiledge, (whereof they should be preiudiced) and then albeit an Attornement bee had to the Tenant for life, and he acknowledge the acquitall, &c. yet after his decease he in remainder shall not distreyne vntill he acknowledge the Acquitall, notwithstanding the Attornment of the Tenant for life.

¶ *Auera le remainder per voy descheat.* For the remainder is holden of the Lord, but not immediately holden, and in this case by the escheat of the remainder the Seigniorie is extinct, for the Fee simple of the Seigniorie being extinct, there cannot remain a particular estate for life thereof, in respect of the Tenure and attendance ouer, and of this opinion is Littleton (a) himselfe in our Bookes. But otherwise it is of a Rent charge, for if that be granted for life, and after he in the reuersion purchase the land, so as the reuersion of the Rent charge is extinct, yet the Grantee for life shall enioy the rent during his life, for there is no Tenure or attendance in this case.

3.H.6.1. Old Tenures 107. (a) 15.E.4.13.a.

M.3.H.6.1.

¶ * *Mes nemy de faire Auowrie, &c.* This is added to Littleton, but it is consonant to Law, and the authoritie truly cited.

Section 558.

¶ Item si soit Seignior et tenant et le tenant lessa les tenements a vn feme pur terme de vie, le remainder ouster en fee, et la feme prent baron, et puis le seignior granta les seruices, &c. a le baron et ses heires, en cest case le seruice est mis en suspence durant le couerture. Mes si la feme deuie viuant le Baron, le baron et ses heires aueront le rent de ceux en le remainder, &c. et en ceo case il ne besoigne ascun attornement per parol, &c. pur ceo que le baron que doit attorn̄ accepta le fait del graunt de les seruices, &c. le quel acceptance est vn attornment en la Ley.

ALso if there bee Lord and Tenant, and the Tenant letteth the tenements to a woman for life, the remainder ouer in fee, and the woman taketh husband, and after the Lord grant the seruices, &c. to the husband and his heires, in this case the seruice is put in suspence during the Couerture, but if the wife die liuing the husband, the husband and his heires shall haue the rent of them in the remainder, &c. And in this case there needeth no Attornement by parol, &c. for that the husband which ought to attorne, accepted the deed of grant of the seruices, &c. the which acceptance is an attornment in the Law.

¶ *Le quel acceptance est vn attornement en la Ley, &c.* Littleton hauing spoken (as hath beene sayd) of Attornements in Deed or expresse, now commeth to speake of Attornements in Law, or implied, and hauing before set downe fiue expresse Attornments in Deed, doth in this Chapter enumerate 7. Attornments in Law. Heere it is to be vnderstood, That the expresse Attornement of the husband will binde the wife after the couerture,

2.E.3.42. 15.E.3. Attornment, 11.

couerture, and in as much as this acceptance of the grant is an Attornement in Law without a word of Attornement the Seigniorie shall passe. And this is the first example that Littleton putteth of an Attornement in Law, which amounteth to an expresse Attornement, for that it is an agreement to the grant.

44.E.3.tit.Fines 37. 12.E.4.4.

If the Lord grant his Seigniory to the Tenant of the Land, and to a stranger, and the Tenant accept the Deed, this acceptance is a good Attornement to extinguish the one moity, and to vest the other moity in the Grantee, as hath beene said.

Section 559.

CEm̃ l' manner est, si soyent Seignior & tenant & le tenant prent feme, & puis le Seignior granta les seruices a la feme & ses heirs, & le baron accepta le fait, en cest cas apres la mort le baron, la feme & ses hẽs aueront les seruices, &c. car per le acceptance del fait per l' baron, ceo est bone attornement, &c. coment que durant la couerture les seruices sont mis en suspence, &c.

CIN the same manner is it, if there be Lord and tenant, and the Tenant taketh wife, and after the Lord grant his seruices to the wife and his heires, & the husband accepteth the deed. In this case after the death of the husband the wife and her heires shall haue the seruices, &c. for by the acceptance of the deed by the husband, this is a good attornement, &c. albeit during the couerture the seruices shal be put in suspence, &c.

CHere is the second example that Littleton putteth of an Attornement in Law and standeth vpon the former reason.

C *Sont mise en suspence.* **Suspence commeth of** suspendeo, **and** in Legall vnderstanding is taken when a Seigniorie, Rent, Profit apprender, &c. by reason of vnitie of possession of the Seigniorie, Rent, &c. and of the land out of which they issue are not in esse for a time, & tunc dormiunt, but may be reuiued or awaked. And they are said to be extinguished when they are gone for euer & tunc moriuntur and can neuer be reuiued, that is when one man hath as high and perdurable an estate in the one as in the other.

Sect. 560.

CItem si soyent Seignior & tenant, & l' tenãt granta les tenements a vn home pur terme d' la vie, le remainder a vn auter en fee, si le Seignior granta les seruices a le tenant a terme de vie en fee, en cest cas le tenant a

ALso if there bee Lord and Tenant, and the Tenant grant the tenemẽts to a man for tearme of his life the remaynder to another in fee, if the Lord grant the seruices to the Tenant for life in fee, in this case the tenant for tearme of life

CHere is the third case that Littleton putteth of an Attornement in Law. And it is to bee obserued that albeit a grant, as hath beene said, may enure by way of release, and a release to the Tenant for life doth worke an absolute extinguishment, whereof hee in the remaynder shall take benefit, yet the Law shall neuer make any construction against the purport of the grant to the preiudice of any, or against the meaning of the parties as

here it should, for if by construction it should enure to a release, the heires of the Tenant for life should bee disherited of the rent, and therefore Littleton here sayth, that the heires of the Grantee shal haue the Seigniory after his death. And here is an Attornement in Law to a grant suspended that cannot take effect in the grantee so long as he liueth but shall take effect in his heires by discent for the Inheritance of the Seignorie was in the tenant for life, and the suspension only during his life.

terme de vie ad fee en les seruices. Mes les seruices sont mis en suspence durant sa vie. Mes les hẽs le tenant a terme de vie aueront les seruices apres sõ decease, &c. Et en cest cas il ne besoigne attornement, car per lacceptance del fait d celuy, q̃ doit attourner, &c. est ceo attournement de luy mesme.

hath a fee in the seruices; but the seruices are put in suspence during his life. But the heires of the Tenant for life shall haue the seruices after his decease, &c. And in this case there needeth no Attornement, for by the acceptance of the Deed by him which ought to attorne, &c. this is an Attornement of it selfe.

Section 561.

¶ Mes lou le tenant ad cy grand & haut estate en les tenements, sicome le Seignior ad en le Seigniory, en tiel case, si le Seignior graunta les seruices al tenant en fee, ceo vera per voy dextinguishment, causa patet.

BVt where the Tenant hath as great and as high estate in the tenements, as the Lord hath in the Seigniory, in such case if the Lord grant the seruices to the Tenant in fee, this shall enure by way of extinguishment, *Causa patet.*

¶ Here Littleton intendeth not only as great and high an Estate, but as perdurable also, as hath beene said, for a Disseisor or Tenant in fee vpon condition hath as high and great an Estate but not so perdurable an Estate, as shall make an extinguishment.

Sect. 562.

¶ Here in this case hee in the Reuersion of the tenancy must attorn, because he is the Tenant to the Lord, and yet the Seignorie shall bee suspended during the life of the Grantee, because hee hath an estate for life in the Tenancie, but his heires shall enioy the Seignorie by Discent.

¶ *Vncore il ne*

¶ Item si soyent Seignior & tenant, & le tenant fait vn leas a vn home pur terme de sa vie, sauant le reuersion a luy, si le Seignior granta le Seigniorie a le tenant a terme de vie en fee, en cest case il couient

ALso if there bee Lord and Tenant, and the Tenant maketh a Lease to a man for terme of his life, sauing the reuersiõ to himselfe, if the lord grãt the Seigniory to tenant for life in fee. In this case it behoueth that he in the reuer-

ent que celuy en le reuersion attorna al tenant a terme de vie per force d cel grant, ou autrement le grãt est voide, pur ceo que celuy en le reuersion est tenãt al Sñr, &c.

¶* Et uncore il ne tiendra del tenant a terme de vie, durant la vie, Causa patet.*¶

sion must attorne to the tenant for life by force of this grant, or otherwise the grant is voide, for that hee in the reuersion is tenant to the Lord, &c.

*¶ Yet hee shall not hold of the tenant for life during his life. *Causa patet, &c.*

tient, &c. This is added, and not in the originall and is against Lawe, and therefore to be reiected.

¶ *Tenant al Seignior, &c.* Here is to bee vnderstood a diuersitie when the whole estate in the Seigniory is suspended, and when but part of the estate in the Seigniory is suspended. And in this case the Seigniory is suspended but for terme of life, (a) and therfore as to all things concerning the right it hath his being, but as to the possession during the particular estate (a) 34. Ass. p. 15.

the Grantee shall take no benefit of it, therefore during that time he shall haue no Rent, Seruice, Wardship, Reliefe, Harriot, or the like, because these belong to the possession, but if the Tenant dieth without heire, the Tenancie shall escheate vnto the Grantee, for that is in the right, and yet when the Seigniory is reuiued by the death of the Tenant, there shall be Wardship, as if the Tenant marry with the Seigniorelle and dieth, his heire within age, the wife shall haue the Wardship of the heire. Also in the case that Littleton here putteth, albeit the seigniory be suspended but for life, yet some hold that he cannot grant it ouer because the Grantee tooke it suspended, and it was neuer In esse in him, but if the Tenant make a Lease for yeares or for life to the Lord, there the Lord may grant it ouer because the Seigniory was In esse in him, and the fee simple of the Seigniory is not suspended, but if the Lord disseise the Tenant, or the Tenant enfeoffe the Lord vpon Condition there the whole estate in the Seigniory is suspended, and therefore he cannot during the suspencion take benefit of any Escheat, ñ grant ouer his Seigniory. 16.E.3.tit.Voucher.88. 5.E.3. Tenures.

Sect. 563.

¶ Tẽ si soient seigniors et tenant, et le tenãt tient del Seignior per xx. maners des seruices, et le Seignior granta son seigniory a vn auter, si le tenant paya en fait ascun parcel dascun de les seruices al grauntee, ceo est bone attornment, de et pur touts les seruices, coñt que lentent de le teñ fuit dattourner forsque de cel parcel, pur ceo que le seigniory est entier, coment que ils sont di-

ALso if there bee Lord and tenant, and the tenant holdeth of the Lord by xx. maner of seruices, and the Lord grant his Seigniory to another, if the tenant pay in Deed any parcell of any of the seruices to the Grantee, this is a good Attornement, of and for all the seruices, albeit the entent of the tenant was to attorne but for this parcell, for that the Seigniorie is intire, although there bee diuers man-

¶ HEre it appeareth that an Attornement being made for parcell is good for the whole, for seeing hee hath attorned for part, it cannot bee voide for that, and good it cannot be vnlesse it be for the whole, but of this sufficient hath beene said before in this chapter. 4 E.3.55. Malmans case. 2.E.3.23. 5 E.4.2. 22.Ass.66. 7.H.4.10. 33.H.6.8 Per Prisot.

¶ *Paya ascun parcell des seruices.* Here is the fourth example of an Attornement in Law, for payment of any parcell of the seruices, is an agreement in Law to the grant. 40.E.3.34

¶ *Coment que lentent del tenant fuit dattorner, &c.* Quia

Quia intentio inſeruire debet legibus, non leges intentioni. And yet as farre as it may ſtand with the rule of Law, it is honourable for all Iudges to iudge according to the intention of the parties, and ſo they ought to doe. And of this ſomewhat in this Chapter hath beene ſaid before.

20.H.6.

Sect. 564.

CHere is to be obſerued that this iudgement in the Scire facias (which is no more but that the Demandant ſhall haue execution,&c.) is a good Attornemẽt, albeit it is preſumed that Iudiciũ redditur in inuitum, & that an Attornement in Law of any part is good for the whole And this is the fift example that Littleton putteth of an Attornement in Law.

43.E.3.34. 3.E.3. Quid mirum clamat. 4.E.3.28.29. 37.H.6.14. per Moyle. 17.E.3.29.

CItem ſi ſoit Seignior et tenant, et le tenant tient del Sñr per pluſors maners des ſeruices, et le Sñr granta les ſeruices a vn auter per fine, ſi le grantee ſua vn Scire facias hors del meſme le fine pur aſcun parcel de les ſeruices, et ad iudgement de recouer, cel iudgement eſt bone attornement en ley, pur touts les ſeruices.

ALſo if there bee Lord and tenant, and the tenant holdeth of the Lord by many kinde of ſeruices, and the Lord grant the ſeruices to another by fine, if the Grantee ſue a *Scire facias* out of the ſame fine for any parcell of the ſeruices, and hath iudgement to recouer, this iudgemẽt is a good attornement in Law for all the ſeruices.

Note that in caſe of a Deede nothing palleth before Attornement as hath beene ſaid; In the caſe of the Fine, the thing granted palleth as to the ſtate, but not to diſtraine,&c. without Attornement. In the caſe of the King the thing granted doth paſſe both in eſtate and in priuity to diſtraine,&c. without Attornement, vnleſſe it be of Lands or Tenements that are parcell of the Dutchy of Lancaſter, and lye out of the Countie Palatine.

Sect. 565.

CItem ſi le Seignior dun rent ſeruice graunta les ſeruices a vn auter, et le tenant attorna per vn denier, et puis le grauntee diſtraine pur le rent arere, et le tenant a luy fait reſcous, en ceo cas le grauntee nauera aſſiſe del rent, forſque briefe de reſcous, pur ceo que le don del denier per le tenant, ne fuit forſque per voy dattornement,&c. Mes ſi le tenant auoit done a le grauntee le dit denier, come parcel de le rent, ou vn maile, ou vn farthing per voy de ſeiſin

ALſo if the Lord of a Rent ſeruice grant the ſeruices to another, and the tenant attorne by a penny, and after the Grantee diſtraine for the rent behinde, & the tenant make reſcous, In this caſe the grantee ſhall not haue an Aſſiſe for the rent but a writ of reſcouſe becauſe the giuing of the penny by the tenant was not but by way of attornement,&c. but if the tenant had giuen to the grantee the ſaid penny as parcell of the rent, or a halfe penny or a farthing by way of ſeiſin of the rent then this

seisin del rent, donque ceo est bone attornement, et auxy est bon seisin al grauntee del rent, et donqz sur tiel rescous le grantee auera assise, &c.

is a good attornement, and also it is a good seisin to the Grantee of the rent, and then vpon such rescous the Grantee shall haue an assise, &c.

CHereupon is to be obserued a diuersity betweene money giuen by way of Attornement, and where it is giuen as parcell of the rent by way of seisin of the rent. For albeit the rent be not due before the day, yet a payment of parcell of the rent before hand is an actuall seisin of the rent to haue an Assise. And so it is if he giue an oxe, a horse, a sheepe, a Knife, or any other valuable thing in name of seisin of the rent beforehand, this is good. And therefore a payment in name of seisin is more beneficiall for the Grantee, because that is both an actuall seisin and an attornement in Law, and yet being giuen before the day in which the rent is due, it shall not be abated out of the rent. So, as to giue seisin of the rent, it is taken for part of the rent, but as to the payment of the rent, it is accounted as no part of the rent, and the reason of the diuersity is for that remedies to come to rights or duties are euer taken fauourably. Here also appeareth that there is an actuall seisin, or a seisin in Deede of a rent, whereof (as Littleton here speaketh) an Assise doth lye; and a seisin in Law which the Grantee hath by Attornement before actuall possession.

39.H.6.3.26. 3.E.4.2.

Vid. Sect.235.
25.E.3 44. 49.E.3.15.
37.H.6.39. 49.Ass.p.6.
34.H.6.42.
15 E.3.Execution 63.
40.E.3.22. 28.H.6.6 b.
7.H.4.2.18.Attorney Br 97.

Sect. 566.

¶Item si sont plusors Jointenãts que teignont p certaine seruices, et le Seignior graunta a vn auter les seruices, et vn d les Jointenants attorna al grauntee, ceo est auxy bon, sicõe touts eussent attorne, pur ceo que le seigniory entier, &c.

ALso if there bee many Iointenants which hold by certaine seruices, and the Lord grant to another the seruices, and one of the Ioyntenants attorne to the grantee, this is as good as if all had attorned, for that the seigniory is entire, &c.

CHere is to be obserued what manner of Tenants shall attorn to the Grant. And first (b) if there two or more Ioyntenants and one of them attorne it is sufficient, for as it hath beene often said, there cannot bee an Attornement in part. And albeit there is great Authority against Littleton, yet the Law hath beene adiudged according to Littletons opinion, as it hath beene in other of his cases when they haue come in question, and as it is of an Attornement, so it is of a seisin, a seisin of a Rent by the hands of one Ioyntenant is good for all, and a seisin of part of the rent is a good seisin of the whole.

(b) 39.H.6.3.26. See Tookers case vbi supra, and the Authorities there cited.

(c) If either the Grantor or the Grantee die, the Attornement is Countermanded, but if the Tenant die he that hath his estate may attorne at any time. If the Tenant grant ouer his estate, his Assignee may attorne.

(c) Vid lib.4 fol.8. lib.6. fol.57. lib 9.fol.34. Vid.4.H.6.29. 18.E.4.10.

(d) If an Infant hath lands by purchase or by discent he shall be compelled to attorne in a Per quæ seruitia, and no mischiefe to the Infant, for when he commeth to full age hee may disclaime to hold of him, or he may say that he hold by lesser seruices, but there should be a greater mischiefe for the Lord if the Attornement of an Infant should not be good, for hee should lose his seruices in the meane time.

If an Infant be a Lessee he shall be compelled to attorne in a Quid iuris clamat. The Attornement of an Infant to a grant by Deede is good, and shall binde him, because it is a lawfull act, albeit he be not vpon that grant by Deed compellable to attorne. Of Baron and Feme Littleton putteth many cases in this chapter.

(d) 42.E.3. Age 33. 26.E.3.62. 37.H.8. tit. Attorne: Br. 26.E.3.62. 26.Ass.27. 32 E.3. tit per quæ seruit. 9. 2.E.2. Attorn.78. 2.E.2 ibid.77. 18.H.6.2. Lib.9.fo.84.85 Comyns case. 4.Mar. Dier 137. 21.E.3.Age 85. 7.E.2. Age 140.

(e) A man that is deafe and dumbe, and yet hath vnderstanding may attorne by signes, (f) but one that is not Compos mentis cannot attorne, for that he that hath no vnderstanding cannot agree to the Grant.

(e) 26.E.3.63.
(f) 18.E.3.53.

What conueyances shall be good without Attornements more shall be said in this Chapter in his proper place.

Sect. 567.

¶ Item si home lessa tenemẽts a terme dans, per force de quel lease le Lessee est seisie, et puis le Lessor per son fait granta le reuersion a auter pur terme de vie, ou en taile, ou en fee, il couient en tiel case que le Tenãt a terme dans attorna, ou autrement rien passera a tiel grantee per tiel fait. Et si en ceste case le tenant a terme dans atturna al Grantee, donque maintenant passera le Franketenement al Grauntee per tiel atturnement sauns ascun liuerie de seisin, &c. pur ceo que si ascun liuerie ou seisin, &c. serra, ou besoigne destre fait en cel case, donque le tenant a terme dans serroit al temps de liuerie de seisin ouste de son possession, le quel serroit encounter reason, &c.

ALso if a man letteth tenemẽts for terme of yeares, by force of which Lease the Lessee is seised, and after the Lessor by his Deed grant the reuersion to another for terme of life, or in Taile, or in Fee, it behooueth in such case that the Tenant for yeares attorne, or otherwise nothing shall passe to such grantee by such deed. And if in this case the Tenaunt for yeares attorne to the Grantee, then the Freehold shall presently passe to the Grantee by such attornment without any liuerie of seisin, &c. because if any liuerie of seisin, &c. should be or were needfull to bee made, then the Tenant for yeares should be at the time of the Liuery of seisin ousted of his possession, which should bee against reason, &c.

¶ HEre Littleton hauing spoken of Graunts of Seigniories and Rent charges, and Rents secke issuing out of land, here treateth of a Grant of a Reuersion of land vpon an estate for yeares, seeing this grant of the Reuersion must be by Deed, and the agreement of the Lessee for yeares requisite thereunto, the Freehold and Inheritance do passe thereby, as well as by Liuerie of seisin, if it were in possession: and the grant of the reuersion by Deed with the Attornement of the Lessee, doe counternaile in Law a Feoffement by Liuerie, as to the passing of the Freehold and Inheritance.

¶ *A terme dans.* (g) And yet a Tenant by Statute Merchant, or Tenant by Statute Staple, or by Elegit, must also attorne, for the Grantee may haue a Venire facias ad computandum, or tender the money, &c. and discharge the Land, and if the reuersion be granted by fine, they shall be compelled to attorne in a Quid iuris clamat.

And so the Executors that haue the land vntill the debts bee payd, must attorne vpon the grant of the Reuersion, although they haue not any certaine terme for yeares.

(g) 6.E.3.53. 25.E.3.53. Brook. Tit. Attorn. 48.

32 E.3. Seis. fac. 101. Dy. 1.a

Sect. 568.

¶ HEre Littleton, speaketh of a Reuersiõ expectant vpon an an estate for life, or a gift in Taile.

¶ *Il couient que le Tenaunt de la Terre at-*

¶ Item si Tenements soiẽt lesses a vn home pur terme de vie, ou done en le taile sauãt le

ALso if Tenements be letten to a man for terme of life, or giuen in Taile, sauing the reuersion, &c. if hee in

le reuerſion, &c. ſi celuy en le reuerſion en tiel caſe granta le reuerſion a vn auter per ſon fait, il couient que le Tenaunt de la Terre attourna al Grantee en la vie le Grantor, ou auterment, le Graunt eſt voyd.

the reuerſion in ſuch caſe grant the reuerſion to another by his Deed, it behooueth that the Tenant of the Land attorne to the Grauntee in the life of the Grantor, or otherwiſe the Graunt is voyd.

torne al Grauntee, &c.

Let vs therefore ſpeake firſt of Tenaunt for life: and yet in ſome caſe albeit Tenaunt for life hath granted ouer his Eſtate, yet he ſhall atturne, (a) as if Tenant in Dower or by the Curteſie, grant ouer his or her eſtate, and the heire grant ouer the reuerſion, the Tenant in Dower or by the Curteſie may atturne, becauſe at the time of the Grant made they were attendant to the heyre in reuerſion, and the Grantee

(a) 10.H.4.tit. Attorne. 16 11.H.4.18. 30.E.3.16 8. F.3.23. 18.E.3. 9.E.1. Quadrans eſam. 41. 4.E.3. 18. Temps E.1.tit. Waſt, 122.

cannot be Tenant in Dower, or Tenant by the Curteſie. And if the Reuerſion bee granted by Fine, the Fine muſt ſuppoſe that the Tenant in Dower or by the Courteſie, did hold the land, albeit they had formerly granted ouer their eſtate, and albeit the Reuerſion doth paſſe by the Fine, yet the Quid iuris clamat muſt be brought againſt him that was Tenant at the time of the note leuied. But yet after the reuerſion is granted ouer, the Grantee ſhall not haue any Action of Waſt againſt the Tenant in Dower or by the Curteſie, but the Action of Waſt muſt be brought againſt their Aſſignee, and not againſt themſelues, for Tenant by the Curteſie or Tenant in Dower cannot hold of any but of the heire: and therefore in reſpect of the priuitie, they ſhall attorne and be ſubiect to an Action of Waſt, as long as the reuerſion remaineth in the heire, albeit they haue granted ouer their whole eſtate. And it is worthie of the obſeruation, that if the grantee of the reuerſion doth bring an action of Waſt againſt the aſſignee of the tenant by the curteſie, (b) the pl' muſt rehearſe the ſtat. which prouideth that no prohibition of Waſt in that caſe lay at the common law, as it did if the heire had brought it againſt the tenant by the curteſie himſelfe: & therefore ſome doe hold, That if the heire do grant ouer the reuerſion, that the attornment of the Aſſignee of the Tenant by the Curteſie, or of Tenant in Dower is ſufficient, becauſe they afterward muſt be attendant and ſubiect to the Action of Waſt.

F.N.B.55.E. Regiſt. fo.72. 4.E.3.26.

(b) Regiſt.72.

If the reuerſion of Leſſee for life be granted, and Leſſee for life aſſigne ouer his eſtate, the Leſſe cannot attorne, but the attornement of the Aſſignee is good, becauſe (as Littleton here ſaith) it behooueth that the Tenant of the Land doe attorne, and after the aſſignement there is no tenure or attendance, &c. betweene the Leſſee and him in reuerſion.

18.E.4.10.b. 26.B.3.62.

If Leſſee for life aſſigneth ouer his eſtate vpon Condition, he hauing nothing in him but a Condition ſhall not attorne, but the Aſſignee may attorne becauſe he is Tenant of the land.

5.H.5.10.

Section 569.

CEſt meſme le maner eſt, ſi terre ſoit done en taile, ou leſſe a vn hõe p̃ terme de vie, le remainder a vn auſ en fee, ſi celuy en le remainder voile granter ceſt remaind a vn auter, &c. ſi le tenant de la terr̃ attorna en la vie le Grantor, donques l' grant de tiel rem̃ eſt bon, ou auterment nemy.

IN the ſame manner is it if land be granted in taile, or let to a man for term of life, the remainder to another in fee, if he in the rem̃ wil graunt this remainder to another, &c. if the tenant of the land attorne in the life of the Grantor, then the grãt of ſuch a remainder is good, or otherwiſe not.

CLittleton alſo ſpeaketh here of an Attornement by tenant in Taile, and true it is that he may attorne, but where the reuerſion is granted by fine, hee is not cõpellable to attorn, becauſe he hath an eſtate of Inheritance which may continue for euer. And ſo it is of a tenant in taile after poſſibilitie of Iſſue extinct, he ſhall not be compelled to attorne for the Inheritance which was once in him. (c) But if Tenaunt in taile after poſſibilitie of Iſſue extinct grant ouer his Eſtate, his Aſſignee ſhal be compelled to attorn, becauſe he neuer had but a bare ſtate for life

12.E.4.3.4. 3.E.4.11. 43.E.3.1.46.E.3.13.

5.H.5

20.E.3. Quid iuris clam. 50.

(c) See the Chap. of Tenant in Taile after poſſibilitie of Iſſue extinct. And Ewins caſe there cited to be adiudged.

But

But as to Tenant in Taile note a diuersitie betweene a Quid iuris clamat, and a Quem redditum reddit, or a Per quæ seruicia; for against a Tenant in Taile, no Quid iuris clamat lieth, as is aforesayd. But if a man make a gift in taile, the remainder in fee, and the Seigniorie or Rent charge issuing out of the land be granted by Fine, the Conusee shall maintaine a Per quæ seruicia, or a Quem redditum, and compell him to attorne, for herein his estate of Inheritance is no priuiledge to him, for that a tenant in Fee simple (as his estate was at the Common law) is also compellable in these cases to attorne.

Section 570.

¶* P. 12.E.4. Et la est ten⁹ per tout le Court que Tenant en Taile ne serra arct datturner, mes sil atturna gratis, cest assets bone. *

P. 12. *Edw.* 4. It is there holden by the whole Court, that Tenant in Taile shall not be compelled to attorne, but if he will attorne *gratis*, it is good enough.

12.E.4.3.4. ¶ This is added to Littleton, and therefore though it be good Law, and the Booke truly cited, yet I passe it ouer.

Section 571.

¶ Item si terre soit lesse a vn home pur terme dans, le remainder a vn auter p̄ terme de vie, reseruant al Lessour vn certaine rent per an, et liuerie de seisin sur ceo est fait al tenant p̄ terme dans, si cestuy en le reuersion en cest case granta le reuersion a vn auter, &c. et le tenant que est en le remainder apres le terme dans soy attourna, ceo est bone Attournement, et celuy a que cest reuersion est graunt per force de tiel Attornement distreynera le Tenant a terme dans pur le Rent due aps tiel Attornment, coment que le ten̄t a terme dans ne vnques attournast a luy. Et la cause est, p̄ ce que lou le reu̅sion est dependant sur lestate del franktenem̄t, suffist que le t̄ del franktenem̄t attourna ꝑ tiel Grant del Reu̅sion, &c.

ALso if Land bee let to a man for yeares, the remainder to another for life, reseruing to the Lessor a certaine rent by the yeare, and Liuerie of Seisin vpon this is made to the Tenant for yeares, if hee in the Reuersion in this case grant the Reuersion to another, &c. and the Tenant which is in the Remainder after the terme of yeares attorne, this is a good Attornement, and hee to whome this Reuersion is granted, by force of such Attornement shall distreyne the Tenant for yeares for the Rent due after such Attornement, albeit that the Tenant for yeres did neuer attorne vnto him. And the cause is for that where the Reuersion is depending vpon an estate of Freehold it sufficeth that the Tenant of the Freehold doe attorne vpon such a Grant of the reuersion, &c.

¶ S*uffist que le Tenant del Franktenement attorna.* Note Littlet. saith not here, That the Tenant of the Franktenement ought in this case to attorne, but that

that it ſufficeth that he doth attorne. And I heard Sir Iames Dier Chiefe Iuſtice of the Common Pleas hold, that in this caſe if the tenant for yeares did attorn it would beſt the reuerſion, for ſeeing the eſtate for yeares is able to ſupport the eſtate for life, he ſhall binde him in the remaynder by his Attornement in reſpect of his eſtate and priuitie.

Paſch.15.Eliz. in Brabritches Caſe in Communi Banco.

Sect. 572.

CEt eſt aſcauoir, que lou vn leas a terme dans, ou a terme de vie ou done en taile eſt fait a aſcun home, reſeruant a tiel leſſor, ou donor, vn certaine rent, &c. ſi tiel leſſor, ou donor, graunta ſon reuerſion a vn auter, & le tenant del terre attourna, le rent paſſa al grauntee, coment q̄ en le fait del grant de reuerſion nul mention ſoit fait de le rent, pur ceo que le rent eſt incident al reuerſion en tiel caſe, & nemy è conuerſo, &c. Car ſi home voile graunter le rent en tiel caſe a vn auter, reſeruant a luy le reuerſion del terre, coment que le tenant attorna a le grauntee, ceo ſerra forſque vn rent ſecke, &c.

AND it is to be vnderſtood, that where a leaſe for yeares or for life, or a gift in taile is made to any man reſeruing to ſuch Leſſor or Donor a certaine rent, &c. if ſuch Leſſor or Donor grant his Reuerſion to another, & the tenant of the land attorne, the rent paſſeth to the Grantee, although that in the deed of the grant of the Reuerſion no mention be made of the rent, for that the Rent is incident to the Reuerſion in ſuch caſe, and not *è conuerſo, &c.* For if a man will grant the rent in ſuch caſe to another, reſeruing to him the Reuerſion of the Land, albeit the Tenant attorne to the grantee, this ſhall bee but a Rent ſecke, &c.

Of this Littleton hath ſpoken before in the Chapter of Rents.

Section 573.

CItem ſi home leſſa terre a vn auter p̄ term̄ d̄ ſa vie & puis il confirma p̄ ſon fait leſtate al tenant a term̄ d̄ vie, le remainder a vn auter en fee, & le tenant a terme d̄ vie accepta le fait, donques eſt le remainder en fait en celuy a que le remainder eſt done ou limitte per meſme le fait, car per lacceptance del tenant a term̄ de vie de le fait, ceo eſt vn agreement de luy, & iſſint vn attornement en ley. Mes vncore celuy en le remainder nauera aſcun action

ALſo if a man let land to another for his life, and after hee confirme by his Deed the eſtate of the Tenant for life, the remaynder to another in fee, and the Tenant for life accepteth the Deed, then is the remaynder in fait in him to whom the remaynder is giuen or limited by the ſame Deed. For by the acceptance of the Tenant for life of the deed, this is an agreement of him, and ſo an Attornement in Law. But yet hee in the remaynder ſhall not haue any acti-

tion de waste, ne auter benefit per tiel remainder, si non que il auoit le dit fait en poigne, per que l'remainder fuit taile ou graunt a luy. Et pur ceo que en tiel cas l'tenant a termñ de vie voile p̄ cas reteigner le fait a luy, a cel entent que celuy en le remainder nauer-roit aſcun action ó waſte enuers luy, pur ceo que il ne poit bener dauer le fait ẽ ſa poſſeſſion, il ſer-ra bone & ſure choſe en tiel cas pur celuy en le remaynder, que vn fait endent ſoit fait per celuy que voile faire tiel confirmation, & le remaynder ouſter. &c. & que celuy que fait tiel confirmation deliuera vn part del Indenture al tenant a terme de vie, & le au-ter part a celuy que auera le re-mainder. Et donque il per mon-ſtr nce de le part del endenture, poit auer action de waſt enuers le tenant a terme de vie, & touts auters aduantages que celuy en le remainder poit auer en tiel caſe, &c.

on of Waſte nor otherbenefit by ſuch remaynder vnleſſe that hee hath the ſaid Deed in hand where-by the remaynder was entayled or granted to him. And becauſe that in ſuch caſe the Tenant for life peraduenture will retaine the Deed to him to this intent that he in the remaynder ſhould not haue any Action of Waſte againſt him for that hee cannot come to haue the Deed in his poſſeſſion it will bee a good and ſure thing in ſuch caſe for him in the remaynder, that a Deed indented bee made by him which will make ſuch Confirma-tion, and the remaynder ouer, &c. and that hee which maketh ſuch Confirmation deliuer one part of the Indenture to the Tenant for life, and the other part to him that ſhall haue the remaynder. And then he by ſhewing of that part of the Indenture may haue an Action of Waſte againſt the tenant for life and all other aduantages that he in the remainder may haue in ſuch a caſe, &c.

Vid. Sect. 525. 575.
Vide Pl. Com. in Colthirſts Caſe. Doct. & Stud. cap. 20. fol. 92. 94.
8. R. 2. in waſte in Liure eſſere 17. E. 3. conſimas. 4.
35. H. 6. fol. 8. 13. H. 8. Pl. Com. 149. in Thorckmor-tons caſe. 45. E. 3. 14. 15. 11. H. 4. 39. 14. H. 4. 31.

HEre Littleton putteth a caſe of a remaynder whereunto an Attornement is requi-ſite. And this is the firſt example of an Attornement in Law.

Remaynder a vn auter, &c. Of this ſufficient hath been ſaid in the Chapter of Confirmation. Sect. 525.

Si non que il auoit le fait en poigne. And albeit he hath no reme-die to come to the Deed during the life of Tenant for life, yet becauſe hee is priuy in eſtate hee ſhall not maintaine an Action of waſte without ſhewing the Deed, but when the remaynder is once executed, he ſhall not need to ſhew the Deed.

Il ſerra bone & ſuer choſe, &c. Hereby it appeareth how neceſ-ſary it is to vſe learned aduice in a mans Conueyance, for thereby ſhall bee preuented many queſtions, and not to follow the aduice of him that is experimented only. For as in Phiſicke, Nullum medicamentum eſt idem omnibus, ſo in Law one forme or preſident of Conueyance will not fit all caſes.

Sect.

Sect. 574.

¶ Item ſi deux Joyntenants ſont, l'vn queux leſſont lour terr̄ a vn auter pur terme de vie, rendant a eux & a lour heires certaine rent per an, en ceſt caſe ſi vn des Joyntenants en le reuerſion, releſſa a lauter Joyntenant ẽ meſme le reuerſion, ceſt releas eſt bone, & celuy a que le releas eſt fait, auera ſolemẽt le rent del tenant a terme de vie, & auera ſolement vn briefe de waſte enuers luy coment q̃ il ne vnques attorneroit, per force de tiel releas, &c. Et la cauſe eſt pur le priuity que vn foits fuit perenter le tenant a terme de vie, & eux en le reuerſion.

ALſo if two Ioyntenants bee who let their Land to another for tearme of life rendring to them and to their heires a certaine yearely rent. In this caſe if one of the Ioyntenants in the reuerſion releaſe to the other Ioyntenant in the ſame reuerſion this releaſe is good, and he to whom the releaſe is made ſhall haue only the rent of the Tenant for life, and ſhall only haue a Writ of Waſte againſt him although hee neuer attorned by force of ſuch releaſe, &c. And the reaſon is for the priuitie which once was betweene the Tenant for life and them in the reuerſion.

¶ *Eux Iointenants.* And ſo it is (as it is here to be vnderſtood) albeit there bee three or more Ioyntenants, and one of them releaſeth to one of the other.

It is true that there is a difference betweene theſe releaſes, for the Releaſe in the one caſe maketh no degree, but hee to whom the Releaſe is made is ſuppoſed in from the firſt Feoffor, and in the other it worketh a degree, and hee to whom the Releaſe is made is in the per by him, yet in neyther of theſe caſes there is requiſite any Attornement, for both of them are within Littletons reaſon (for the priuitie, &c.)

¶ *Pur le priuitie, &c.* For if one Ioyntenant make a Leaſe for yeares reſeruing a Rent and dieth, the Survivor ſhall not haue the Rent, and therefore Littleton here addeth materially for the priuity that was betweene the Tenant for life and them in the reuerſion. 2. Eliz. Dier. 178.

And here it is good to bee ſeene what grantors or others that make Conueyances, &c. are ſuch as their Grants or Conueyances are either good without Attornement, or where the Tenant is no way compellable to attorn. Tenant for life ſhall not bee compelled to attorne in a quid iuris clamat vpon a grant of a reuerſion by fine holden of the King in Chiefe without licence, but the reaſon hereof is not becauſe the Tenant for life might be charged with the fine, for his eſtate was more ancient then the fine leuied, but becauſe the Court will not ſuffer a preiudice to the King, and the King may ſeiſe the reuerſion and rent, and ſo the Tenant ſhall be attendant to another. Alſo it is a generall rule that when the grant by fine is defeaſible, there the Tenant ſhall not bee compelled to attorne. 45.E.3.6.b. 13.Eliz. Dier 288. Lib.3.fol.86. Iuſtice Windhams caſe. 36.H.6.24.

As if an Infant leuie a fine, this is defeaſible by writ of Error during his minoritie, and therefore the Tenant ſhall not be compelled to attorne.

So if the Land be holden in ancient Demeſne, and hee in the reuerſion leuieth a fine of the reuerſion at the Common Law, the Tenant ſhall not be compellable to attorne, becauſe the eſtate that paſſed is reuerſible in a writ of Deceit. 5.E.3 25.31.E.3. Auncient Demeſne 16.

So if Tenant in tayle had leuied a fine, the Tenant ſhould not be compelled to attorne, becauſe it was defeaſible by the iſſue in tayle. 24.E 3.25.b. 37.H.6.33. 48.E.3.23.

But now the Statutes of 4.H.7. and 32 H.8. having giuen a further ſtrength to fines to barre the iſſue in tayle, the reaſon of the Common Law being taken away, the Tenant in this caſe ſhall be compelled to attorne, as it was adiudged (*) in Iuſtice Windhams Caſe. (*) Lib.3.fol.86. Iuſtice Windhams caſe.

If an alienation be in Mortmaine the Tenant ſhall not bee compelled to attorne becauſe the Lord Paramount may defeat it. 17.E.3.7. 22.E.3.18.

Sect. 575.

CEN meſme le maner, & pur meſme la cauſe eſt, lou hõe leſſa terre a vn auter pur terme de vie, le remainder a vn auter pur terme de vie, reſeruant le reuerſion al leſſour, en ceſt cas ſi celuy en le reuerſion releſſa a celuy en le remainder et a ſes heires tout ſon droit, &c. donqs celuy en le remainder ad vn fee, &c. et il auera vn briefe de Waſt enuers le tenant a terme de vie ſans aſc attornement de luy, &c.

IN the ſame manner, and for the ſame cauſe is it, where a man letteth land to another for life, the remainder to another for life, reſeruing the reuerſion to the leſſor, in this caſe if hee in the reuerſion releaſeth to him in the remainder and to his heires all his right, &c. Then he in the remainder hath a fee, &c. and hee ſhall haue a writ of Waſte againſt the tenant for life without any attornement of him, &c.

Vid. Sect. 549. 553. 556.

This needeth no explication.

Section 576.577.

CThere haue beene now in all ſeuen examples, that Littleton putteth of an Attornement in Law, And here he putteth two caſes alſo of a notice in Law. And the reaſon of both theſe are here rendred by Littleton. Firſt for the notice Littleton ſaith that the Leſſee ſhall not by Law be miſconuſant of the Feoffments that were made of and vpon the ſame land. And the reaſon of the Attornement is becauſe the whole fee ſimple paſſeth by the Feoffment, and the Leſſee by his regreſſe leaueth the reuerſion in the Feoffee which ſaith Littleton is a good Attornement. The ſame Law it is of a Tenant by Statute Merchant or Staple, or Elegit. And ſo it is of a Leaſe for life, as Littleton here ſaith, and ſo it was reſolued (e) in Brasbritches caſe, and after in the Deane of Pauls his caſe in the

46.E.3.30.b. 2.H.5.4. 5.H.5.12. 34.H.6.6. 18.E3.47. 9.H.6.10.

(e) Brasbritches caſe 7.15.Eliz. Deane of Pauls caſe, 20.Eliz.

CItem ſi home leſſa terres ou tenements a vn auter pur terme des ans, et puis il ouſta ſon termour, et ent enfeoffa vn auter en fee, et puis le tenant a terme dans enter ſur le feoffee, enclaimant ſon terme, &c. et puis fait waſt, en ceſt caſe le feoffee auera per la ley vn briefe de waſt enuers luy, et uncore il nattornaſt pas a luy. Et la cauſe eſt, come ieo ſuppoſe, p ceo que celuy que ad droit de auer terres ou tenements pur term dans, ou auterment, ne ſerroit per la ley miſconuſant de les feoffments q fueront faits de

ALſo if a man lett lands or tenements to another for terme of yeares, and after he ouſt his termor, and thereof enfeoffe another in fee, and after the tenant for yeares enter vpon the feoffee, clayming his term, &c. and after doth waſte, in this caſe the feoffee ſhall haue by law a writ of Waſte againſt him, and yet hee did not attorne vnto him. And the cauſe is as I ſuppoſe, for that he which hath right to haue lands or tenements for yeares, or otherwiſe ſhould not by lawe bee miſconuſãt of the feoffments which were made of and vpon the ſame

de et ſur meſmes les terres, &c. et entant que per tiel feoffment le tenant a terme dans fuit mis hors de ſon poſſeſſiõ, et p ſon entre il cauſaſt le reuerſion deſtre a celuy a que le feoffment fuit fait, ceo eſt bon attornement, car celuy a que le feoffment fuit fait, auoit nul reuerſion deuaunt que le tenant a terme dans auoit enter ſur luy, pur ceo que il fuit en poſſeſſion en ſon demeſne come de fee, et per lenr del tenant a termñ dans il y ad forſque vn reuerſion, quel eſt p le fait l'teñ a term dãs, ſ. p ſon entrie, &c.

lands, &c. and inaſmuch as by ſuch feoffment the tenant for yeares was put out of his poſſeſſion, and by his entrie he cauſed the reuerſion to bee to him to whom the feoffment was made, this is a good attornement, for hee to whom the feoffment was made had no reuerſion before the tenant for yeares had entred vpon him for that he was in poſſeſſion in his demeſne as of fee, and by the entrie of the tenant for yeares, hee hath but a reuerſion, which is by the act of the tenant for yeares, s. by his entrie, &c.

Common place. But ſhall the Leſſee in this caſe whether hee will or no doe an act that amount to an Attornement, viz. by his regreſſe or elſe loſe the profit of his land? And ſome doe hold that in that caſe if the Leſſee for life doe recouer in an Aſſiſe, this is no Attornement, becauſe hee come to it by courſe of Law, and not by his voluntary act. And yet in that caſe as in the caſe of the fine the ſtate of the reuerſion is in the Feoffee. (f) But others doe hold it all one in caſe of a recouery, and a regreſſe.

34.H.6.7.

(f) 18.E.3.48.b. Lib.6.fo.60.b. Sir Moyle Finches caſe.

(g) If the Leſſor diſſeiſe Tenant for life or ouſte Tenant for years, and maketh a feoffment in fee, by this the rent reſerued vpon the Leaſe for life or yeares is not extinguiſhed, but by the regreſſe of the Leſſee the rent is reuiued, becauſe it is incident to the reuerſion: and ſo hath it beene adiudged. But if a man be ſeiſed of a rent in fee, and diſſeiſe the Tenant of the land, and make a feoffment in fee, the Tenant re-entreth, this rent is not reuiued. And ſo note a diuerſity betweene a rent incident to a reuerſion, and a rent not incidẽt to a reuerſiõ.

(g) 9 H.6.16. Deane of Paules caſe, Vbi ſupra.

If two ioynt Leſſees for yeares or for life bee ouſted or diſſeiſed by the Leſſor, and he enfeoffe another, if one of the Leſſees re-enter this is a good Attornement, and ſhall binde both, for an Attornement in law is as ſtrong as an Attornment in Deed.

Sect.577.

MEſme la ley eſt, come il ſemble, lou vn Leas eſt fait pur terme d vie, ſauant le reuerſion al Leſſour, ſi le Leſſour diſſeiſiſt le Leſſee, & fait feoffment en fee, ſi le tenant a terme de vie enter et fait waſt, le feoffee auera briefe de waſte ſans aſcun auter attournement, Cauſa qua ſupra, &c.

THe ſame Law is, as it ſeemeth where a Leaſe is made for life, ſauing the reuerſion to the Leſſor if the Leſſor diſſeiſe the Leſſee, and make a feoffment in fee, if the tenant for life enter and make waſte the Feoffee ſhall haue a writ of waſte without any other attornement, *Cauſa qua ſupra, &c.*

If a man make a Leaſe for life, and then grant the reuerſion for life and the Leſſee attorne, and after the Leſſor diſſeiſe the Leſſee for life, and make a feoffment in fee, & the Leſſee re-enter, this ſhall leaue a reuerſion in the Grantee for life, and another reuerſion in the Feoffee, and yet this is no Attornement in Law of the Grantee for life, becauſe he doth no act, nor aſſent to any which might amount to an Attornement in Law. Et res inter alios acta alteri nocere non debet. Neither hath the Grantee for life the land in poſſeſſion, ſo as he may well be miſcontent of the feoffment made vpon the Land, and ſo out of the reaſon of Littleton, Yet yet the reuerſion in fee doth paſſe to the Feoffee.

Section 578.

CHEere it appeareth, that where the Anceſtor taketh an Eſtate of Freehold, and after a Remainder is limited to his right heires, that the Fee ſimple veſteth in himſelfe, as well as if it had beene limited to him and his heires, for his right heires are in this caſe words of limitation of eſtate, and not of purchaſe. Otherwiſe it is where the Anceſtor taketh but an eſtate for yeares: As if a Leaſe for yeares be made to A. the remainder to B. in Tayle, the remainder to the right heires of A. there the remainder veſteth not in A. but the right heires ſhall take by purchaſe if A. die during the eſtate Taile, for as the Anceſtor and the Heyre are Correlatiua of Inheritances, ſo are the Teſtator and Executor, or the Inteſtate and Adminiſtratour of Chattels. And ſo it is if A. make a Feoffement in Fee to the vſe of B. for life, and after to the vſe of C. for life or in Taile, and after to the vſe of the right heirs of B. B. hath the Fee ſimple in him as well when it is by way of limitation of vſe, as when it is by Act executed.

¶ Item ſi leas ſoit fait pur terme de vie, le remainder a vn auter en le Taile, le remaind̄ ouſter a les droit heires le tenant a terme de vie. En ceſt caſe ſi le tenant a terme de vie granta ſon remainder en fee a auter per ſon fait, cel remainder maintenant paſſa per le fait ſans aſcun Attournment, &c. Car ſi aſcun doit attorne en ceſt caſe, ceo ſerroit le tenant a terme de vie, et en vain ſerroit que il atturneroit ſur ſ̄ grant demeſne, &c.

ALſo if a Leaſe be made for life, the remainder to another in Taile, the remainder ouer to the right heirs of the Tenant for life: In this caſe if the Tenant for life grant his Remainder in fee to another by his Deede, this Remainder maintenant paſſeth by the Deede without any Attournement, &c. for that if any ought to attourne in this caſe, it ſhould be the Tenaunt for life, and in vaine it were that he ſhould attorne vpon his owne Grant, &c.

¶ *En vaine ſerroit, &c.* Quod vanum & inutile eſt Lex non requirit. Lex eſt ratio ſumma, quæ iubet quæ ſunt vtilia & neceſſaria, & contraria prohibet; and arguments drawne from hence are forcible in Law.

Vi. Sect. 194. 273.

Sect. 579.

¶ Item ſi ſoit Seignior et tenant, et le Tenant tient del Seignior per certaine rent, et ſeruice de chiualer, ſi le Sñr granta les ſeruices de ſon tenñt p̄ fine, les ſeruices ſont maintenant en le grantee per force del fine, mes vncore le Sñr ne poet pas diſtreyne p̄ aſcun parcel de les ſeruices ſans attournment: Mes ſi le tenant deuia (ſon heire deins age) le Sñr auera le gard del corps

ALſo if there be Lord and Tenant, and the Tenant holdeth of the Lord by certaine Rent and Knights ſeruice, if the Lord grant the ſeruices of his Tenant by fine, the ſeruices are preſently in the Grantee by force of the Fine: but yet the Lord may not diſtreine for any parcell of the ſeruices, without Attornement. But if the Tenant dieth, his heire within age, the Lord ſhall haue the Wardſhip

corps del heire, et de ses terres, &c. coment que il ne vnque attournast, pur ceo que le Seigniorie fuit en le grantee maintenant p force del fine. Et auxy en tiel cas, si le tenant morust sans heire, le Seignior auera les tenants p voy descheat.

of the bodie of the heire, and of his lands, &c. albeit he neuer attorned, becauſe that the Seigniorie was in the Grauntee preſently by force of the Fine. And alſo in ſuch caſe if the Tenaunt die without Heire, the Lord ſhall haue the Tenancie by way of Eſcheat.

CHEere Littleton beginneth to ſhew what aduantages the Conuſee of a Fine may take before Attornement, and what not.

(h) First, he cannot diſtreyne becauſe an Auowrie is in lieu of an Action, and thereunto priuitie is requiſite. So likewiſe, and for the ſame cauſe hee can haue no Action of Waſt, nor Writ of Entrie, ad Communem legem, or in Conſimili caſu, or in caſu prouiſo, Writ of Cuſtomes and Seruices, nor Writ of Ward, &c.

But if a man make a Leaſe for yeares, and grant the reuerſion by fine, if the Leſſee bee outed, and the Conuſee diſſeiſed, the Conuſee without Attornement ſhall maintaine an Aſſiſe, for this Writ is maintained againſt a ſtranger, where there needeth no priuitie. And ſuch things as the Lord may ſeiſe or enter into without ſuing any Action, there the Conuſee before any Attornment may take benefit thereof, as to ſeiſe a ward or Heriot, or to enter into the lands or tenements of a Ward, or eſcheated to him, or to enter for an alienation of Tenant for life or yeares, or of Tenant by Statute Marchant, Staple, or Elegit, to his diſheriſon.

(h) 8.E.3.44. 26.E.3.63. 10.H.6 16.34.H.6.7. 12.E.4.4. 40.E.3.7. 5.H.5.12 48.E.3.15.6. 3 E.2. Dront 33.

Sect. 580.581.582.

CEa meſme le manner eſt, ſi hoe granta le reuerſion de ſon tenaunt a terme de vie a vn auter per fine, le reuerſion paſſa maintenant al Grantee per force del fine, mes le grantee iammes naura Actiõ de waſt ſans atturnment, &c.

IN the ſame manner it is, if a man graunt the reuerſion of his Tenant for life, to another by fine, the reuerſion maintenant paſſeth to the Grantee by force of the fine, but the Grauntee ſhall neuer haue an Action of Waſt without Attornment, &c.

CIt is ſayd in our books, That if Tenaunt for life haue a priuiledge not to be impeachable of waſt, or any other priuiledge, if hee doth attorne without ſauing his priuiledge, that hee hath loſt it; which is ſo to bee vnderſtood, where he attornes in a Quid iuris clamat brought by the Conuſee of a fine, that if he claimeth not his Priuiledge, but attorne generally, his priuiledge is loſt, for that the Writ ſuppoſeth him to bee but a bare Tenant for life, and by his generall Attornement according to the Writ he is barred for euer to claime any priuiledge but a bare Eſtate for life. But if vpon a grant of the reuerſion by deed, the Tenaunt for life doth attorne, hee loſeth no priuiledge, for there can be no concluſion or barre by the Attornment in paiis: and ſo it is of an Attornement in Law. As if the Leſſor diſſeiſe the Leſſee for life, and make a Feoffement in Fee, and the Leſſee re-enter, this is an attornment in law, which ſhall not preiudice him

40.E.3.7.43.E 3.5. 48.E.3.32. 45.E.3.6. 21.E.3.48. 24.E.3.32. 39.H.6.25. F.N.B.136.

Sect. 581.

CMes vncore ſi le Tenant a terme de vie alienaſt en fee, le grantee poet enter, &c. pur ceo que l'reuerſion fuit en luy per force del Fine, et tiel alienation fuit a ſon diſheritance.

BVt yet if the tenant for life alieneth in fee, the Grantee may enter, &c. becauſe the Reuerſion was in him by force of the fine, and ſuch Alienation was to his diſheritance.

Sect.

of any priuiledge: so it is if the Lessor leuie a Fine of the reuersion, and the Conusee die without heire, whereby the Reuersion escheateth, in this case the Law doth supply an Attornment, and therefore the Lessee shall lose no priuiledge. But in the Quid iuris clamat, if the Lessee shew his estate and his priuiledge, and is readie, sauing to him his priuiledge, &c. to attorne, hereby either his priuiledge shall bee allowed and entred of record, or he shall not be compelled to attorne: (b) and if the plaintife bee within age, so as hee cannot acknowledge the priuiledge, the tenant shal not bee compelled to attorne vntil his full age, when hee may acknowledge it. But otherwise it is, (as some hold) if a Quid iuris clamat bee brought by Baron and Feme, the priuiledge shall be entred into the Rolle notwithstanding she is a Feme Couert. And in a Per quæ seruicia brought by the Conusee of the Meine, the Tenant may shew that he held by homage Auncestrell, and sauing to him his Warrantis and acquitall, he is readie to attorne. In the same manner, if the Tenaunt hath any other acquitall, and the Meine leuie a Fine to one for life, the remainder to another in Fee, the Tenant for life bringeth a Per quæ seruicia, and the Tenant is readie to attorne sauing his acquitall, and the Plaintif acknowledgeth it, and thereupon the tenant attorne, tenant for life dieth; in this case albeit regularly the Attornement to the Tenant for life is an Attornement to him in the Remainder, yet in this case hee in the remainder shall not distreyn, til he hath acknowledged the acquitall, which must be in a Per quæ seruicia brought by him against the Tenant.

(b) 43.E.3.5.

45.E.3.11.a. Vet.N.B.in Per quæ seruicia. 5.E.3. Meine 56. & Per quæ seruicia 16. 37.H.6.33.39.H.6. 25.18.E.4.7.

vi. Sect. 557.

Sect. 582.

¶ MEs en ceſt cas lou le Sñr granta les ſeruices ô ſon Tenant per fine, ſi Tenant deuie (ſon heire eſteant de plein age) le Grantee per le fine nauera reliefe, ne vnques diſtreyne-ra pur reliefe, ſinon que il auoit lattorne-ment del Tenaunt que mozuſt, car ô tiel choſe que giſt en di-ſtreſſe, ſur que le Bre ô Repleuin eſt ſue, &c. home doit & couient dauower l' priſel boñ et droiturel, &c. et la couient eſtre attorn-ment ôi Tenant, co-ment que le graunt de tiel choſe ſoit per fine, mes dauer le gard de les terres ou tenements iſſint ten⁹ durant le nonage heire, ou de eux auer per voy deſcheat, la ne beſoigne aſcun di-ſtreſſe, &c. mes vn entrie en la terre per force de le droit del ſeignioꝛy que l' grant-tee ad per force del Fine, &c. Sic vide di-uerſitatem.

BVt in this case where the Lord granteth the seruices of his Tenant by fine, if the Tenant die (his heire being of ful age) the grantee by the fine shall not haue reliefe, nor shall euer distreine for reliefe, vnlesse that hee hath the Attornement of the Tenaunt that dieth: for of such a thing which lieth in Distresse, whereupon the Writ of Repleuin is sued, &c. a man must and ought to auow the taking good & rightful, &c. and there there ought to be an attornment of the tenant, although the graunt of such a thing be by fine. But to haue the wardship of the lãds or tñts so holdẽ during the nonage of the heire, or to haue them by way of escheat, there needs no distresse, &c. but an entrie into the land by force of the right of the Seigniorie, which the Grauntee hath by force of the fine, &c. *Sic vide diuersitatem, &c.*

¶ *Alien en fee, &c.* Of this sufficient hath been sayd in the next precedent Section.

¶ *Nauera reliefe, &c.* Of this sufficient hath been said in the next precedent Section.

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Sect. 583.

¶ Item si soit Seignior, mesne & tenant, & le mesne graunta per fine les seruices de son tenãt a vn auter en fee, & puis le grantee morust sans heire, ore les seruices del mesnaltie deuiendront & escheate al Seignior Paramont per voy descheat, & si apres les seruices del mesnaltie sont aderere, en cest cas celuy que fuit Seignior Paramont poit distreiner le tenant, nient obstant que le tenant ne vnques atturnast, et le cause est, pur ceo que le mesnaltie fuit en fait en le grantee per force de le dit fine, & le Seignior Paramont puissoit auower sur le grauntee, pur ceo que il fuit son tenant en fait, coment que il ne serroit a ceo compelle, &c. Mes si le grantor en cest case deuiast sans heire en la vie le grantee, donque il serroit compelle dauower sur le grantee, et auxy entant que le Seigniour Paramont ne claime le mesnaltie per force del graunt fait per fine leuie per le mesne, mes per vertue de son Seigniorie Paramont, s. per voy descheat, il auowa sur le tenant pur les seruices que le mesne auoit, &c. coment que le tenant ne vnques atturna pas.

ALso if there be Lord, Mesne and Tenant, and the Mesne grant by fine the seruices of his Tenant to another in fee, and after the grantee die without heire, now the seruices of the mesnaltie shall come and escheate to the Lord Paramont by way of escheate. And if afterwards the seruices of the Mesnaltie bee behind. In this case hee which was Lord Paramont may distreine the Tenant, notwithstanding that the Tenant did neuer attorne, and the cause is, for that the Mesnaltie was in deed in the Grantee by force of the said fine, and the Lord Paramont may auow vpon the Grantee because in deed hee was his Tenant, albeit hee shall not be compelled to this, &c. But if the Grantor in this case had died without heire in the life of the Grantee, then he should bee compelled to auow vpon the Grantee and also in as much the Lord Paramont doth not claime the Mesnaltie by force of the grant made by fine leuied by the Mesne but by vertue of his Seigniorie Paramount, *viz.* by way of escheat he shall auow vpon the Tenant for the seruices which the mesne had, &c. albeit that the Tenant did neuer attorne.

HEre Littleton putteth a Case where one that claymeth vnder a Conuse by fine may distraine or maintaine any Action, albeit there was neuer any Attornement made to the Conuse or to him that hath his estate. *45.E.3.2.34.H.6.7. 37.H.6.38. 39.H.6.32. 5.H.7.18. per Curiam.*

And here is a diuersitie betweene an act in Law that giueth one Inheritance in lieu of another, and an Act in Law that conueyeth the estate of the Conuse only. Of the former Littleton here putteth an example of the escheat of the Mesnaltie which drowneth the Seigniory Paramont, and therefore reason would that the Lord by this act in Law should haue as much benefit of the Mesnaltie escheated, as he had of the Seigniory that is drowned, and the rather for that the Law casteth it vpon him, and hee hath no remedie to compell the Tenant to *Lib.8.fol.68. Sir Moyle Finches case.*

attorne. Another reason hereof Littleton here yeeldeth, because the Lord commeth to the Mesnaltie by a Seigniorie Paramount, and therefore there needeth no Attornement (c) As if Lease for life be of a Mannor, and he surrender his estate to the Lessor there needeth no Attornement of the Tenants because the Lessor is in by a title Paramount. But if the Conusee dieth, and the Law casteth his Seigniory vpon his heire by discent, he shall not be in any better estate, then his Ancestor was, because he claymeth as heire meerely by the Conusee.

(c) *Temps E.2. Attorn.* 18. 39.*H* 6.38. *per Priot.*

So it is (as hath beene said) if the Conusee of a fine before Attornement bargaineth and selleth the Seigniory by Deed indented and inrolled, the Bargainee shall not distraine because the Bargainor, from whom the Seigniory moueth, had neuer actuall possession.

Sir Moyle Finches case, vbi supra.

So and for the same reason if a Reuersion be granted by fine, and the Conusee before Attornement disseise the Tenant for life and make a feoffment in fee, and the Lessee re-enter, the feoffee shall not distraine.

Sect. 584.

HEre Littleton expresseth two diuersities, first betweene an act in law, and the grant of the partie. This case is put of an (d) escheate, which is a meere act in Law, but so it is, when it is partly by Act in Law, and partly by the Act of the partie, as if the Conusee of a Statute Merchant extendeth a Seigniory or Rent, hee shall distreine without any Attornement. If a man make a Lease for life or yeares, and after leute a fine to A. to the vse of B. and his heires. B. shall distraine and haue an Action of waste albeit the Conusee neuer had any Attornement because the reuersion is vested in him by force of the Statute, and hath no remedie to compell the Lessee to attorne.

(d) 45.*E.*3.2.34.*H.*6.7. 5.*H.*7.18. *per Curiam.*

13 *H.*4 *auowrie* 237.

*Lib.*6. *fol* 68. *in Sir Moy'e Finches case.*

27.*H.*8.*cap.*10.

And so it is of a bargaine and sale by Deed indented and inrolled, but this is by force of a Statute since Littleton wrote.

CEn meisme le maner est, lou le reuersion dun tenant a terme de vie soit grant per fine a vn auter en fee, & le grantee apres mourust sans heire, ore le Seignior ad le reuersion p voy descheat. Et si apres le tenant fait wast, le Seignior auera briefe de wast enuers luy, nient contristeant que il ne vnques attorna, Causa qua supra. **Mes lou vn home claime per force del graunt fait per le fine, s. come heire, ou com assignee, &c. la il ne distreinera ne auowera, ne auera action de wast, &c. sans Attornement.**

IN the same manner it is where the reuersion of a Tenant for life is granted by fine to another in fee, and the grantee afterwards dieth without heire, now the Lord hath the reuersion by way of escheate, and if after the Tenant maketh waste, the Lord shall haue a Writ of Waste against him, notwithstanding that he neuer attorned, *Causa qua supra.* But where a man claimeth by force of the grant made by the fine .s. as heire or as assignee, &c. there hee shall not distraine nor auowe, nor haue an action of waste, &c. without Attornement.

Secondly, where he that commeth in by Act in Law is in the per, as the heire of the Conusee, who setteth in his Ancestors seat, Tanquam pars antecessoris de sanguine, and the Lord by escheate, which is an estranger, and commeth in meerely in the Post.

Section 585.

CItem en ancient Borroughs & Cities, lou terres & tenements

ALso in ancient Boroughes and Cities, where Lands and Te-

ments deins meſmes les boroughes et Cities ſont deuiſable per teſtament per cuſtome et vſe &c. ſi en tiel borough ou citie hõe ſoit ſeiſie de rent ſeruice, ou de rent charge, et deuiſa cel rent ou ſeruice a vn auter per ſon teſtament et mozuſt, en ceſt cas celuy a que tiel deuiſe eſt fait, poit diſtreiner le tenant pur le rent ou ſeruice aderere, coment que le tenant nattozna pas.

nements within the ſame Boroughes and Cities are deuiſable by teſtament by cuſtome and vſe, &c. if in ſuch Borough or Citie a man be ſeiſed of a rent ſeruice, or of a rent charge, and deuiſeth ſuch rent or ſeruice to another by his teſtament and dieth, In this caſe he to whom ſuch deuiſe is made may diſtreine the tenant for the rent or ſeruice arere, although the tenant did neuer attorne.

CHere doth Littleton put a caſe where a man may haue a Seigniory, Rent, Reuerſion, or Remainder merely by the act of the party and may diſtraine, and haue any action without any Attornment, and that is by deuiſe of lands deuiſable by cuſtome when Littleton wrote by the laſt will and Teſtament of the owner.

34.H.6.6. 5.H.7.18. 19.H.6.24. 21.H.6.38.a. F.N.B.121.a.

Sect. 586.

CEſm meſme le maner eſt lou home leſſa tiels tenemẽts deuiſables a vn auter pur terme de vie, ou pur terme dans, et deuiſa le reuerſion per ſon teſtamẽt a vn auter en fee, ou en fee taile et mozuſt, et puis le tenant fait waſt, celuy a que le deuiſe fuit fait auera briefe de waſt, coment que le tenant ne vnque attozna. Et la cauſe eſt pur ceo, que la volunt le deuiſour fait per ſon teſtament ſerra perfozme ſolonque lentent del deuiſour, et ſi leffect de ceo girroit ſur lattournement del tenant, donques per caſe le tenant ne voyle vnques atturner, et donques le volunt del deuiſoz ne ſerroit vnque perfozme, &c. et pur ceo le deuiſee diſtreinera, &c. ou auera action de waſt, &c. ſans attourñment. Car ſi home deuiſa tiels tenements a vn auter per ſon teſtament, Habend' ſibi imperpetuum, & mozuſt, et le deuiſee enter, il ad fee ſimple,

IN the ſame manner is it, where a man letteth ſuch tenements deuiſable to another for life, or for yeares, and deuiſeth the reuerſion by his Teſtament to another in fee, or in fee taile, and dyeth, and after the Tenant commits waſte, he to whom the deuiſe was made ſhall haue a writ of waſte, although the Tenant doth neuer attorne. And the reaſon is for that the will of the Deuiſor made by his Teſtament ſhall bee performed according to the intent of the Deuiſor, and if the effect of this ſhould lye vpon the Attornement of the Tenant, then perchance the Tenant would neuer attorne, and then the will of the deuiſor ſhould neuer bee performed, &c. and for this the deuiſee ſhall diſtraine, &c. or he ſhall haue an action of waſte, &c. without attornement. For if a man deuiſeth ſuch tenements to another by his teſtament, *Habend' ſibi imperpetuum*, & dieth, and the de-

ple, Causa qua supra, **vncore si fait de feoffment vst este fait a luy per le deuisor en sa vie de mesmes les tenements,** Habend' sibi imperpetuum, **et liuery de seisin sur ceo fuit fait, il naueroit estate forsque pur terme de sa vie.**

uisee enter, hee hath a fee simple, *Causa qua supra*, yet if a deed of feoffment had beene made to him by the deuisor of the same tenements, *Habend' sibi imperpetuum*, & liuery of seisin were made vpon this hee should haue an estate but for terme of his life.

¶ Both this and the precedent case stand vpon one and the same reason which Littleton here yeelds, viz. **because that the will of the Deuisor expressed by his Testament shall be performed according to the intent of the Deuisor, and it shall not lye in the power of the Tenant or Lessee to frustrate the will of the Deuisor by denying his Attornement,** Here Littleton **mentioneth a maxime of the Common Law,** viz. Quod vltima voluntas testatoris est perimplenda secundum veram intentionem suam, **and** reipublicæ interest suprema hominum testamenta rata haberi.

Vid.Sect.167.
Bracton.lib.1.fol.11.& fo.60
Fleta.lib.2.ca.15.
Britton,fol.78.& fo.212.b.

¶ *Testament.* Testamentum .i. testatio mentis, **which is made** nullo presentis metu periculi sed sola cogitatione mortalitatis. Omne testamentū morte consummatū.

¶ *Car si home deuisa tiels tenements a vn auter,&c.* **Here** Littleton **putteth a case where the entent of the Testator shall be taken,** viz. **where a man by deuise shall haue a fee simple without these words heires, and here** Littleton **putteth the diuersity betwixt a will and a feoffment.**

22.E.3.16. 34.H.6.7.
15.E.7.12. 19.H.8.4.

Vid.Sect.167.

Now by the Statutes of 32.and 34.H.8.(as hath beene said in the chapter of Burgage) Lands, Tenements and Hereditaments are deuisable, as by the said Acts doe appeare.

Sect. 587.

¶ **Item si hom̃ seisie dun mannor quel est parcel en demesn̄ et parcel en seruice, et ent soit disseisie, mes les tenants que teignont del mannor ne vnqz attournant a le Disseisor, en cest cas coment que le Disseisor morust seisie et son heire soit eins per discent, &c. vncore poit le Disseisee distreine pur le rent arere, et auer les seruices, &c. Mes si les tenants viendront al Disseisor, et dient, nous deveignomus vostre tenants, &c. ou auter attournement a luy feseyent, &c. et puis le Disseisor morust seisie, donque le Disseisee ne poit distreine pur le rent, &c. pur ceo que tout l'manor discendist al heire le Disseisor, &c.**

ALso if a man bee seised of a mannor which is parcell in demesne and parcell in seruice, and is thereof disseised, but the tenants which hold of the mannor doe neuer attorne to the Disseisor. In this case albeit the Disseisor dieth seised, and his heire is in by discent, &c. yet may the Disseisee distreine for the rent behinde, and haue the seruices, &c. but if the tenants come to the Disseisor and say, We become your tenants, &c. or make to him some other attornement, &c. and after the Disseisor dieth seised, then the Disseisee cannot distraine for the rent, &c. for that all the Mannor discendeth to the heire of the Disseisor, &c.

¶ Littleton **hauing spoken of estates gained by lawfull conueyances doth now speake of estates gained by wrong. And here putteth a case of a disseisin of a Mannor where it appeareth, that the Disseisor cannot disseise the Lord of the rents or seruices without the**

the Attornement of the Tenants to the Diſſeiſor, for ſeeing an Attornement is requiſite to a feoffment and other lawfull conueyances, A fortiori, a Diſſeiſee or other wrong doer ſhall not gaine them without Attornement. The like law is of an Abator and an Intruder. But albeit the Diſſeiſor hath once gotten the Attornement of the Tenants and payment of their rents, yet may they refuſe afterwards, for auoyding of their double charge. And here the Attornement of the Tenant of a Mannor to a Diſſeiſor of the demeanes ſhall diſpoſſeſſe the Lord of the rents and ſeruices parcell of the Mannor, becauſe both demeanes, rents and ſeruices make but one entier Mannor, and the demeanes are the principall: but otherwiſe it is of rents and ſeruices in groſſe, as in this next Section our Author teacheth vs.

6.H.7.14. 11.H.7.28. 11.H.4.14.a.b.

Sect. 588.589.

¶ Mes ſi vn tient de moy per rent ſeruice, le quel eſt vn ſeruice en groſſe, et nient p reaſon de mon mannor, et vn auter que nul droit ad, claima le rent, et reſceiue et prent meſme le rent de mon tenant per coheriſon de diſtres, ou per auter forme, et diſſeiſiſt moy per tiel prender de rent, coment q̃ tiel diſſeiſor mouſt iſſint ſeiſie ẽ pernant d̃ rent, vncore apres ſa mort ieo puiſſoy bien diſtreiner le tenant pur le rent que fuit aderere deuant le deceaſe del diſſeiſor. et auxy apres ſon deceaſe. Et la cauſe eſt, pur ceo que tiel diſſeiſor neſt pas mon diſſeiſor forſque a ma election et ma volunt. Car coment que il prent l'rent de mon tenant &c. vncore ieo puiſſoy a touts foits diſtreiner mon tenant pur le rent arere, iſſint q̃ il eſt a moy forſque ſi come ieo voile ſuffrer le tenant eſtre per tant de temps arere p̃ paier a moy m̃ le rent, &c.

BVt if one holdeth of mee by rent ſeruice, which is a ſeruice in groſſe, and not by reaſon of my Mannor, and another that hath no right, claimeth the rent, & receiues & taketh the ſame rent of my tenãt by coertion of diſtreſſe, or by other forme, and diſſeiſeth mee by ſuch taking of the rent. Albeit ſuch Diſſeiſor dieth ſo ſeiſed in taking of the rent, yet after his death I may well diſtreine the tenant for the rent which was behinde before the deceaſe of the Diſſeiſor, and alſo after his deceaſe. And the cauſe is, for that ſuch Diſſeiſor is not my diſſeiſor but at my election and will. For albeit he taketh the rent of my tenant, &c. yet I may at all times diſtreine my tenant for the rent behinde, ſo as it is to mee but as if I will ſuffer the tenant to bee ſo long time behinde in payment of the ſame rent vnto me, &c.

Sect. 589.

¶ Car le payment de mon tenant a vn auter, a que il ne doit pas payer, neſt pas diſſeiſin a moy, ne ouſta moy pas de mon rent ſans ma volunt et ma election, &c. Car coment que ieo puiſſoy auer Aſſiſe enuers tiel Pernor,

FOr the payment of my Tenaunt to another to whom hee ought not to pay, is no diſſeiſin to me, nor ſhall ouſt me of my Rent, without my will and election, &c. For although I may haue an Aſſiſe againſt ſuch Pernor, yet this is at my elec-

noꝛ, vncoꝛe ceo eſt a mon election, ſi ieo voile prender luy come mon diſſeiſoꝛ ou non. Iſſint tiels diſcents de rents en gros, ne ouſteront pas le ſeignioꝛ d diſtreyner, mes a cheſcun temps ils poyent bien diſtreyner pur l' rent arere, &c. Et en ceſt caſe ſi aps le diſtreſſe de luy que iſſint toꝛciouſment priſt le rent, ieo graunt per mon fait le ſeruice a vn auť, et le tenant attourna, ceo eſt aſſets bone, et les ſeruices per tiel grant et attournement maintenant ſont en l' Gꝛantee, &c. Mes auterment eſt, lou le rent eſt parcel del Manoꝛ, et le diſſeiſoꝛ moruſt ſeiſie del Manoꝛ entier, cõe come en le caſe pꝛocheine auaunt eſt dit, &c.

ction, whether I will take him as my Diſſeiſor, or no. So ſuch diſcents of Rents in groſſe ſhall not ouſt the Lord of his Diſtreſſe, but at any time he may well diſtreyne for the Rent behinde, &c. And in this caſe if after the diſtreſſe of him which ſo wrongfully tooke the Rent, I graunt by my Deede the Seruice to another, and the Tenaunt attourne, this is good enough, and the ſeruices by ſuch Grant and Attornement are preſently in the Grantee, &c. But otherwiſe it is where the Rent is parcell of a Mannor, and the Diſſeiſour dieth ſeiſed of the whole Mannor, as in the caſe next before is ſayd, &c.

¶ HEre Littleton putteth a diuerſitie betweene a Rent ſeruice parcell of a Mannor, whereof hee had ſpoken before, and a Rent ſeruice in Groſſe. For a man cannot be diſſeiſed of a Rent ſeruice in Groſſe, Rent charge, or Rent ſecke by Attornement or payment of the Rent to a ſtranger, but at his Election; for the rule of Law is, Nemo redditum alterius inuito Domino percipere aut poſſidere poteſt; and our Author hath before* taught vs, what be Diſſeiſins of Rents ſeruices, Rents Charges, and Rent ſeckes, and payment to a ſtranger is none of them, but at the Lords election, as our Author here ſaith.

*Vi. Sect. 237. 238. 239. 240.

¶ *Pernor*, i. The taker of my rent. But if the diſſeiſee bring an Aſſiſe againſt ſuch a Pernor, then he doth admit himſelfe out of poſſeſſion.

24. E. 3. 4. 1. E. 5. 5. See the Authorities there following in the next Parcell.

¶ *Diſcents*. A diſcent of a Rent in groſſe bindeth not the right owner but that he may diſtreyne, albeit he admitted himſelfe out of poſſeſſion, and determined his election, as by bringing of an Aſſiſe, &c.

5. E. 4. 1. 23. H. 3. tit. aſſ 439. 24. E. 3. 40 34. 16. Aſſ. p. 15. 16. E. 2. Releaſe 56. 1 E. 5. 5. F. N. B. 179. E. 15. E. 4. 8. Flet. li. 4. ca. 12.

If the Tenant of the land pay the Rent to a ſtranger which hath no right thereunto, and the right owner releaſe to him, this Releaſe is good, becauſe hee thereby admitted himſelfe to bee out of poſſeſſion. But if the Tenant had giuen him any thing in name of Attornement, and the right owner had releaſed to him, this Releaſe had beene voyd, becauſe an Attornement only can be no diſſeiſin of the Rent.

¶ *Ieo grant per mon fait, &c.* This alſo prooueth, That the right owner is not out of poſſeſſion, and that this grant ouer is a demonſtration of his election that he is in poſſeſſion.

Section 590.

¶ ITem ſi ieo ſue ſeiſie dun manoꝛ parcel en demeſn̄, et parcel en ſeruice, et ieo done certaine acres del terre, parcel de demeſne de meſme le manoꝛ a vn auter

ALſo if I be ſeiſed of a Mannor, parcell in Demeſne, and parcell in Seruice, and I giue certaine acres of the land, parcell of the Demeſne of the ſame Mannour, to

auter en le taile, rendant a moy et a mes heires vn certaine rent, &c. Si en ceſt caſe ieo ſue diſſeiſie de la Manor, et touts les tenants atturnont et payont lour rents al diſſeiſor, et auxy le dit tenant en le taile paya le rent per moy reſerue al Diſſeiſor, et puis le Diſſeiſor morust ſeiſie, &c. et ſon heire entra, et eſt eins p diſcent, vncore en ceſt caſe ieo puiſſe bien diſtreigner le Tenant en le taile, et ſes heires, pur le rent p moy reſerue ſur le done, ſ, auxy bien pur le rent eſteant aderere deuant le diſcent al heire le Diſſeiſor, et auxy pur le rẽt que happa deſtre aderere apres meſme le diſcent, nient obſtant tiel morãt ſeiſi dl diſſeiſor, &c. Et la cauſe ẽ, pur ceo que quant home dona tenements en le taile, ſauant le reuerſion a luy, et il ſur le dit done reſerua a luy vn Rent ou auters ſeruices, tout le rent et les ſeruices ſont incidents a la reuerſion, et quant vn home ad vn reuerſion, il ne puiſſoit eſtre ouſte d ſon reuerſion per le fait dun eſtrange home, ſinon que l' tenant ſoit ouſte de ſon eſtate et poſſeſſion, &c. car cy longement que le Tenant en le Taile & ſes heirs continuont lour poſſeſſion p forz̃ de mon done, cy longement eſt le reuerſion en moy et en mes hẽs, et entant que l' rent et les ſeruices reſerues ſur tiel done ſont incidents et dependants al reuerſiõ, quecunque que ad le reuerſion, auera meſme le Rent et Seruices, &c.

another in Taile, yeelding to mee and to my Heires a certaine Rent, &c. if in this caſe I be diſſeiſed of the Mannour, and all the Tenaunts attorne and pay their rents to the Diſſeiſor, and alſo the ſayd Tenant in Taile pay the Rent by me reſerued, to the Diſſeiſor, and after the Diſſeiſor dieth ſeiſed, &c. and his heire enter and is in by Diſcent, yet in this caſe I may wel diſtreyne the Tenant in Taile and his heires, for the rent by me reſerued vpon the Gift, *ſcz.* as well for the Rent being behind before the diſcent to the heire of the Diſſeiſor, as alſo for the rent which happeth to be behind after the ſame diſcent, notwithſtanding ſuch dying ſeiſed of the Diſſeiſor, &c. And the reaſon is, for that when a man giueth lands in Taile, ſauing the reuerſion to himſelfe, and hee vpon the ſayd gift reſerueth to himſelfe a Rent or other Seruices, all the rent and Seruices are incident to the Reuerſion, and when a man hath a Reuerſion, he cannot be ouſted of his Reuerſion by the Act of a Stranger, vnleſſe that the Tenaunt be ouſted of his eſtate and poſſeſſion, &c. For as long as the Tenant in Taile and his Heires continue their poſſeſſion by force of my gift, ſo long is the reuerſion in me and in my Heires: and in as much as the rent and ſeruices reſerued vpon ſuch gift, be incident and depending vpon the reuerſion, whoſoeuer hath the Reuerſion, ſhall haue the ſame Rent and Seruices, &c.

Sect.

Sect. 591.

¶ En meſme le maner eſt, lou ieo leſſa parcel del demeſn̄ del manoꝛ a vn auter pur terme de vie, ou p̄ terme dans, rendant a moy certaine rent, &c. coment q̄ ieo ſoy diſſeiſie del manoꝛ, &c. et le diſſeiſoꝛ moꝛuſt ſeiſie, &c. et ſon heiꝛ eſteant eins per diſcent, vncoꝛe ieo diſtreiner pur le rent arere vt ſupra, nient obſtant tiel diſcent. Car quant home ad fait tiel done en taile, ou tiel leas pur terme de vie, ou pur terme dans del parcel de le demeſne de vn manoꝛ, &c. ſauant le reuerſion a tiel donour ou leſſour, &c. et puis il ſoit diſſeiſie de le manoꝛ, &c. tiel reuerſion apꝛes tiel diſſeiſin eſt ſeuer del manoꝛ en fait, coment que ne ſoit ſeuer en dꝛoit. Et iſſint poyes veier (mon fits) diuerſitie, lou il y ad vn Manoꝛ parcel en demeſne & parcel en ſeruices, les queux ſeruices ſont parcel de meſme le Manoꝛ nient incidents a aſcun reuerſion, &c. & lou ils ſont incidents al reuerſion, &c.

IN the ſame manner is it, where I let parcell of the demeſnes of the Mannor to another for terme of life or for terme of yeares, rendering to mee a certaine rent, &c. albeit I be diſſeiſed of the mannor, &c. and the diſſeiſor die ſeiled, &c. and his heire bee in by diſcent, yet I may diſtreine for the rent arere *vt ſupra*, notwithſtanding ſuch diſcent, for when a man hath made ſuch a gift in taile, or ſuch a leaſe for life or for yeares of parcell of the demeſnes of a mannor, &c. ſauing the reuerſion to ſuch donor or leſſor, &c. And after he is diſſeiſed of the mannor, &c. ſuch reuerſion after ſuch diſſeiſin is ſeuered from the mannor in deed, though it be not ſeuered in right. And ſo thou mayeſt ſee (my ſonne) a diuerſitie, where there is a Mannor parcell in Demeſne and parcell in Seruices, which Seruices are parcell of the ſame Mannor not incident to any Reuerſion, &c. And where they are incident to the Reuerſion, &c.

¶ HEre Littleton putteth a diuerſitie betweene Rents and Seruices parcell of a Mannor (whereof hee had ſpoken before) and Rents and Seruices incident to a Reuerſion parcell of a Mannor.

And the reaſon of this diuerſitie is for that as long as the Donee in taile, Leſſe for life, or Leſſee for yeares are in poſſeſſion, they preſerue the Reuerſion in the Donor or Leſſor, and ſo long as the Reuerſion continue in the Donor or Leſſor, ſo long doe the Rents and Seruices which are incident to the Reuerſion belong to the Donor or Leſſor. Neither can the Donor or Leſſor be put out of his Reuerſion vnleſſe the Donee or Leſſee bee put out of their poſſeſſion, and if the Donee or Leſſee be put out of their poſſeſſion, then conſequently is the Donor or Leſſor put out of their Reuerſion. But if the Donee or Leſſee, make a regreſſe and regaine their eſtate and poſſeſſion, thereby doe they ipſo facto, reueſt the Reuerſion in the Donor or Leſſor.

And here is to be obſerued that when a man is ſeiſed of a Mannor, and maketh a gift in tayle, or leaſe for life, &c. of parcell of the Demeſne of the Mannor (a) the Reuerſion is part of the Mannor and by the grant of the Mannor the Reuerſion ſhall paſſe with the Attornement of the Donee or Leſſee. But if the Lord make a gift in taile, or a leaſe for life of the whole Mannor, excepting blacke Acre parcell of the Demeſnes of the Mannor, and after hee graunteth away his Mannor, blacke Acre ſhall not paſſe, becauſe during the eſtate taile or leaſe for life

(a) 18. Aſſ. p. 2. 38. H. 6. 33. Pl. Com. Fulmerſtons caſe 103 Lib. 5. fol. 11. 12 25. 19. E. 2. Briefe 845. 4. E. 3. Briefe 713.

it it is ſeuered from the Mannor. And ſo note a diuerſitie, that a Reuerſion of part may be parcell of a Mannor in poſſeſſion, but a part in poſſeſſion cannot be parcell of the Reuerſion of a Mannor expectant vpon any eſtate of Freehold. But if a man make a leaſe for yeares of a Mannor excepting blacke Acre, and after granteth away the Mannor, blacke Acre ſhall paſſe, becauſe the Freehold being entire it remayneth parcell of the Mannor, and one Præcipe of the whole Mannor ſhall ſerue. But otherwiſe it is in caſe of the gift in taile or leaſe for life excepting any part, there muſt be ſeuerall writs of Præcipe, becauſe the Freehold is ſeuerall.

Chap. 11. Of Diſcontinuance. *Sect.*592.

Diſcontinuance eſt vn ancient parol en la ley, & ad diuers ſignificatiõs, ſc. Mes quant a vn entent, il ad tiel ſignification, ſ. lou vn home ad alien a vn auter certaine terres ou tenements & mourſt, et vn auter ad droit de auer meſmes les terres ou tenements, mes il ne poit entrer en eux per cauſe de tiel alienation, &c.

Diſcontinuance is an anciẽt word in the Law, & hath diuers ſignifications, &c. But as to one intent it hath this ſignification, *viz.* where a man hath aliened to another certaine lands or Tenements and dieth, and another hath right to haue the ſame Lands or Tenements, but hee may not enter into them becauſe of ſuch an alienation, &c.

Diſcontinuance, is a word compoũded of de and continuo, for continuare is to continue without intermiſſion. Now by addition of de (Euphoniæ gratia dis to it) which is priuatiue, it ſignifieth an intermiſſion. Diſcontinuare nihil aliud ſignificat quam intermittere, deſueſcere, interrumpere. And as our Author ſaith, (a) it is a very ancient word in Law. *Vide Sect.*637.

(a) 8.*H.*4. 8.*b.* 11.*H.*4. 85.*b.*

A diſcontinuance of eſtates in Lands or Tenements is properly (in legall vnderſtanding) an alienation made or ſuffered by Tenant in tayle, or by any that is ſeiſed in auter droit, whereby the iſſue in tayle, or the heire or ſucceſſor or thoſe in Reuerſion or Remaynder are driuen to their Action, and cannot enter.

All which is implyed by the diſcription of our Author, and by the (&c.) in the end of this Section.

I haue added (properly) by good warrant of our Author himſelfe, for Sectione 470 he vſeth Diſcontinuance for a deueſting or diſplacing of a Reuerſion, though the entrie bee not taken away.

This Diſcontinuance conſiſteth in doing or ſuffering an Act to bee done, as hereafter ſhall appeare. And where our Author ſaith, that it hath diuers ſignifications, there is alſo a Diſcontinuance of Proceſſe conſiſting in not doing, where the Proceſſe is not continued, concerning which there is an excellent Statute made in furtherance of Juſtice in (b) 1.E.6. and is well expounded in my Reports, and therefore need not here to be inſerted.

(b) *Vide, the Statutes of* 1.*E.*6.*ca.*7.*&* 31.*Eliz.ca.*1 *Lib.*7.*fol.*30.31.*&c. le caſe de diſcontinuance de prices.*

There is another erronious proceeding and that conſiſteth in miſdoing, as when one Proceſſe is awarded in ſtead of another, or when a day is giuen which is not legall, this is called a miſcontinuance & if the Tenant or Defendant make default it is error, but if he appeare, then the miſcontinuance is ſalued, otherwiſe it is of a Diſcontinuance. But let vs returne to the Diſcontinuance of Eſtates in Lands whereof Littleton doth entreate in this Chapter.

39.*E.*3.7.*a.* 46.*E.*3.30. 37.*H* 6.25.26. 9.*E.*4.18. 12.*E.*4.

¶ *Significations.* Here (as in many other places) it appeareth how neceſſary it is to know the ſignification of words. *Vide Sect.*74.174.194. 441.520.

And in this Chapter it appeareth, that when Littleton wrote, the Eſtate in Lands and tenements might haue beene diſcontinued fiue manner of wayes, viz. by Feoffment, by Fine, by Releaſe with warrantie, Confirmation with warrantie, and by ſuffering of a Recouc-

rie in a Precipe quod reddat. And this was to the prejudice of fiue kinds of persons, viz. of wiues, of heires, of Successors, of those in Reuersion, and of those in Remaynder. But for wiues, and their heires, and for Successors the Law is altered by Acts of Parliament since Littleton wrote, as in this Chapter in their proper places shall appeare.

Section 593.

HEre Littleton putteth an example of a discontinuance made by one seised in auter droit, as by an Abbot who had a fee simple in the right of his Monastery, and therefore his Alienation without the assent of his Couent had beene a Discontinuance at the Common Law, and had driuen his Successor to a writ De Ingressu sine assensu capituli.

Regist. Orig. fol. 220. F.N.B. 195. Bracton lib. 4. fol. 323. Fleta lib. 5. cap. 34.

¶ De Ingressu sine assensu capituli, &c. It is called so because the Alienation was sine assensu capituli, for if it had beene cum assensu capituli, it should haue beene a barre to the successor. And because the successor could not enter, the Common Law gaue him this writ, and is so called of these words contained in the writ, which writ you may reade in the Register & Fitzherberts N.B.

¶ Si come vn Abbe seisie de certaine terres ou tenements en fee, & alienast mesmes les terres ou tenements a vn auter en fee, ou en fee taile, ou pur terme de vie, & puis labbe mozust, son successor ne poit enter en les dits terres ou tenemẽts, coment que il ad droit eux auer come en droit de son meason, mes il est mis a son action de recouerer mesmes les terres ou tenemẽts, quel est appelle Breue de ingressu sine assensu capituli, &c.

AS if an Abbot be seised of certaine Lands or Tenements in fee, and alieneth the same Lands or Tenements to another in fee or in fee taile or for terme of life, and after the Abbot dieth, his Successor cannot enter into the said Lands or Tenements, albeit hee hath right to haue them as in right of his house, but he is put to his action to recouer the same Lands or Tenements, which is called a Writ, *Breue de ingressu sine assensu capituli, &c.*

21. E.4.86.

Here is to bee noted, that in Law the Couent, albeit they be regular and dead persons in Law, yet are they said in Law to be Capitulum to the Abbot, aswell as the Deane and Chapiter, that be Secular to the Bishop. But it is to bee obserued and implyed in this (&c.) that a sole bodie politique that hath the absolute right in them, as an Abbot, Bishop and the like may make a Discontinuance, but a Corporation aggregate of many as Deane and Chapiter, Warden and Chaplaines, Master and Fellowes, Maior and Comminalte, &c. cannot make any Discontinuance, for if they ioyne, the Grant is good, and if the Deane, Warden, Master, or Maior make it alone where the bodie is aggregate of many it is void, and worketh a disseisin. But now (as hath beene said) by the Statutes of 27.H.8. and 31.H.8. all the Abbots, Priors, and other Religious persons are so dissolued as there be none remayning this day, and by the Statutes of 1.Eliz. and 13. Eliz cap.10. and 1.Iac.cap.3. Bishops and all other Ecclesiasticall persons are disabled to alien or discontinue any of their Ecclesiasticall Liuings, as by the same Acts doth appeare.

See more of this matter hereafter in this Chapter. Sect. 648. and before Sect. 528.

Sect. 594.

¶ EN *droit sa feme, &c.* That is to say, in fee simple fee taile,

¶ Item si home seisie de terre come en droit de

ALso if a man bee seised of Land as in right of his

de la feme, &c. enter e feoffa vn auter, &c. e mozust, la feme ne quit enter mes est mis a son action, le quel est appel Cui in vita, &c.

wife, &c. and thereof infeoffe another, &c. and dieth, the Wife may not enter, but is put to her Action, the which is called, *Cui in vita, &c.*

oz foz life. Here Littleton putteth another case where a man is seised in auter droit, and may make a Discontinuance, as the husband seised in the right of his wife, and therefore the Common Law gaue her a Cui in vita, and her heire a Sur cui in vita because they could not enter. But this is altered since our Author wrate by the Statute of 32.H.8. by the purview of which Statute, the wife and her heires after the decease of her husband may enter into the Lands oz Tenements of the Wife notwithstanding the alienation of her husband.

Bracton lib 4 fol. 303. & 22. & 324. *Fleta lib* 5 *cap.* 4 & 26. F.N.B. 193. *Regist.* 32.H.8.*cap.*28.

And here is one of the alienations to make a Discontinuance, viz. a feoffment, and where our Author speaketh of a husband seised in the right of his wife, soit is, where the husband and wife are joyntly seised to them & their heires of an estate made during the Couerture, & the husband make a feoffment in fee, & dieth, the wife now may enter within that statute, although it was the Inheritance of them both. And so it is if the feoffment bee made by the husband and wife, (albeit the words of the Statute be by the husband only) foz in substance this is the act of the husband only.

Dier 4. & 5. *Ph. & Mar.* 146. 3. *Eliz. Dier* 191. *Lib. R. fol.* 71. 72. *Greneleys case.*

If the husband cause a Precipe quod reddat vpon a faint title to bee brought against him and his wife, and suffereth a recouerie without any Voucher, and Execution to bee had against him and his wife, yet this is holpen by the Statute, foz this by like construction is the act of the husband, and the words of the Statute be, made, suffered, oz done.

If the husband make a feoffment in fee of the Lands, which hee holdeth in the right of his wife, and after they are diuorced Causa præcontractus, yet the woman may enter within the purview of that Statute, and is not driuen to her Writ of Cui ante diuortium, as she was at the Common Law, albeit the entrie be by the Statute giuen to the wife and now vpon the matter she was neuer his lawfull wife. But it sufficeth that she was his wife De facto at the time of the alienation, and where her husband dieth shee cannot bee his wife at the time of the entrie.

Greneleys case, vbi supra.

If the husband leuie a fine with Proclamations, and dieth, the wife must enter oz auoid the Estate of the Conuses within fiue yeares, oz else shee is barred foz euer by the Statute of 4.H.7. foz the Statute of 32.H.8. doth helpe the Discontinuance but not the barre, and the Statute speaketh of a fine, and not of a fine with Proclamations.

6.E.6. Dier. 72.b.

4.H.7.c.24.

If lands be giuen to the husband and wife, and to the heires of their two bodies, and the husband maketh a feoffment in fee and dieth, the wife is holpen by the said Statute as hath bene said, and so is the issue of both their bodies. Fem tenant in taile taketh husband, the husband maketh a feoffment in fee, the wife before entrie dieth without issue, hee in the Reuersion oz Remaynder may enter. Foz first the Reuersion oz Remaynder cannot bee discontinued in this case because the estate tayle is not discontinued. Secondly, the words of the Statute be Shall not be prejudiciall or hurtfull to the wife or her heires, or such as shall haue right title or interest by the death of such wife, but that the same wife and her heires, and such other to whom such right shall appertaine after her decease, shall or lawfully may enter into all such Mannors, Lands, &c. according to their rights and titles therein, by which words the entrie of him in the Reuersion oz Remaynder in that case is preserued. The husband is Tenant in taile, the remaynder to the wife in taile, the husband make a feoffment in fee, by this the husband by the Common Law did not only discontinue his owns estate taile but his wifes remaynder but at this day after the death of the husband without issue, the wife may enter by the said Act of 32.H.8. If the husband hath issue and maketh a feoffment in fee of his wifes Land, and the wife dieth, the heire of the wife shall not enter during the husbands life, neither by the Common Law nor by the Statute.

Greneleys case vbi supra. Pasch. 7. *Iac.*

8.E.2 *tit. Cui in vita.* 26. 34.E.1. *ibidem* 30. 10.E.3. 12. *Dier* 21.*Eliz.* 363.

¶ Cui in vita, &c. Here is also implyed a Sur cui in vita, also foz the heire this writ here mentioned in our Author is so called of those words contained in the Writ which you may reade in the Register and Fitzherberts, N.B..

Sect. 595.

¶ *ENfeoffa vn auter,&c.* Here is implyed, or make a gift in taile or an estate for life. Here Littleton putteth a third example of a Discontinuance made by Tenant in taile so as his issue is put to his Formedon in the Discender, which is giuen to the issue in taile by the Statute of 13. E.1.cap.1. because he cannot enter.

Fleta,lib.5.ca.34. F.N.B.211.212.Regist.

¶ *Tenant en taile.* This extendeth aswell to a woman Tenant in taile as to a man, and was generally good Law when Littleton wrote, but now by the Statute of (d) 11.H.7. if the woman hath any estate in taile ioyntly with her husband, or only to her selfe or to her vse in any Lands or Hereditaments of the inheritance or purchase of her husband, or giuen to the husband and wife in taile by any of the Ancestors of the husband, or by any other person seised to the vse of the husband or his Ancestors, and shall hereafter being sole or with any other after taken husband discontinue,&c. the same: euery such Discontinuance shall be voyde, and that it shall be lawfull for euery person to whom the interest, title, or inheritance, after the decease of the said woman should appertaine, to enter,&c. So as if such a feme Tenant in taile doe make any Discontinuance in fee, in taile, or for life, although it be without warranty, yet this doth not take away the entrie after her death either of the issue or of him in reuersion or remainder. This Statute hath beene excellently expounded by diuers resolutions and iudgements (e) which I haue quoted in the margent, and are worthy of due obseruation.

(d) 11.H.7. ca.20. Vid. Sect.697.

(e) Lib.3.fo.co.51. Sir George Brownes case.eodem lib. fo.60.&c.Lanc. Coll. case. lib.1.fo.176. Mildemayes case. Dier 3.& 4.Ph.& Mar. 146 idem 8.Eliz.248. 17.Eliz.340. idem 19.Eliz. 354.Idem.20. Eliz.362. 27.H.8.23. Lib.5.fo.79. Fitzh.case. Lib.8.fo.71.72. Gremeleys case.

If lands were entayled to a man and to his wife, and to the heires of their two bodyes, and the husband had made a Feoffment in fee and died. and then the wife died, this had beene a discontinuance at the Common Law: for the title of the issue is as heire of both their bodyes, and not as heire to any one of them, and his entrie must ensue his title or action.

¶ *De formedon.* De forma donationis, so called because the Writ doth comprehend the forme of the gift. And there be three kinde of writs of Formedon, viz. The first in the Discender to be brought by the issue in taile, which clayme by discent Per formam doni. The second is in the Reuerter, which lyeth for him in the reuersion or his heires or Assignes after the state taile be spent, The third is the Remainder, which the Law giueth to him in the remainder, his heires or Assignes after the determination of the estate taile, of all which you may reade in the Register and F N.B.

¶ Item si tesi en taile de certaine terre ent enfeoffa vn auter,&c. et ad issue et mozust, son issue ne poit pas enter en la terr̃ coment que il ad title et dzoit a ceo, mes est mis a son action que est appel Formedon en le discender,&c.

ALso if tenant in taile of certaine land, thereof enfeoffe another,&c. and hath issue and dieth, his issue may not enter into the land albeit he hath title and right to this, but is put to his action which is called a *Formedon in le discender,&c.*

Here Littleton sheweth that the issue in taile shall haue a Formedon in the Discender. What other actions Tenant in taile may haue, and not haue, is good to be seene.

(a) 4.E.3.38. 43.E.3.25. 4.E.4.25. F.N.B.124.

(a) Tenant in taile shall haue a Quod permittat.

(b) 2.E.2.Droit.28.

(b) Tenant in taile shall haue a writ of Customes and Seruices In le debet, & solet, but shall not haue it in the Debet only.

(c) F.N.B.123.

(c) In like manner he shall haue a Secta ad molendinum in le debet & solet, but not in the Debet tantum.

(d) 21.E.3.11. 5.E.3.23. 11.H.4.49.

(d) Tenant in taile shall haue a writ of Entre in consimili casu and an Admesurement, and a Natiuo habendo, Cessauit, Escheat, Waste, and the like.

(e) 2.E.3. Droit.28. 13.H.7.24. 5.E.4.2. 20.E.3.Auowry 131. F.N.B.10. 46.E.3.tit. Cui in vita,33.

(e) But Tenant in taile shall not haue a writ of Right Sur disclaymer, nor a Quo jure, nor a Ne iniuste vexes, nor a Nuper obijt, or Rationabile parte, nor a Mordancester, nor a Sur cui in vita, for these and the like none but Tenant in fee shall haue: and the highest writ that a Tenant in taile can haue is a Formedon.

Section

Section 596.597.

¶ Item si soit ten̄ en le taile, le reuersion esteant al donor et a les heires, si le tenant fait feoffment, &c. et morust sans issue, celuy en le reuersion ne poit enter, mes est mis a son action de Formedon en le reuerter.

ALso if there bee tenant in taile the reuersion being to the Donor and his heires, if the Tenant make a feoffment, &c. and die without issue, hee in the reuersion cannot enter, but is put to his action of *Formedō in le reuerter.*

¶ *Fait feoffment &c.* Here is implyed Fee simple, Fee taile, or estate for life, and in this and the next Section Littleton putteth two cases, where if the issues in taile faile, they in the reuersion and remainder are driuen to their Formedon in reuersion or remainder, and this remaineth as it was when Littleton wrote not altered by any Statute. And the reason whereof these Alienations in the seuerall cases in this and the next Section doe make a Discontinuance, and put him in the reuersion or remainder that right had to his Action, and toke away his entrie, was for that hee was priuie in estate, and for the benefit of the Purchasor, and for the safegard of his Warrantie, so as euery mans right might bee preserued, viz. to the Demandant for his ancient right, and to the Feoffee for the benefit of his Warrantie, which was founded vpon great reason and equity, which benefit of the warranty should bee preuented and auoyded if the entrie of him that right had were lawfull, and therby also the danger that many times happeneth by taking of possessions was warily preuented by Law. But then it may bee demanded, seeing that there was no reuersion or remainder expectant vpon any estate taile at the Common Law, nor the issue in taile had any remedy by the Common Law, if the Tenant in taile had alienedd, then by what Law is the alienation of Tenant in taile a Discontinuance at this day to the issue in taile?

Vid. Sect.592.597.601. 637.638.

30.E.1.Formedon 65.
10.E.2.Formedon,61.
18.E.3.46. 12.E.4.3.

Sect.597.

¶ En meisme l' maner est, lou tenāt en le taile seisie de certaine terre dont le remainder est a vn auter en le taile, ou a vn auter en fee. Si le tenant en le taile alienast en fee, ou en fee taile, et puis deuiast sans issue, ceux en le remainder ne poiēt enter, mes sont mis a lour briefe de Formedon en le remainder, &c. et pur ceo que per force de tielx feoffments et alyenations en les cases auantdits, et en semblables cases, ceux queux ont title et droit apres la mort de tiel feoffour ou alienour, ne poient pas enter, mes sont mises a lour actions Vt supra, et p̄ ceo cause tiels feoffments et alienations sont appels discontinuances.

IN the same manner is it where tenant in taile is seised of certaine land whereof the remainder is to another in taile, or to another in fee. If the tenant in taile alien in fee, or in fee taile, and after die without issue they in the remainder may not enter, but are put to their writ of *Formedon* in the remainder, &c. and for that that by force of such feoffments and alienations in the cases aforesaid, and the like cases, they that haue title and right after the death of such a feoffor or alienor may not enter, but are put to their actions, *Vt supra*, and for this cause such feoffments and alienations are called discontinuances.

taile or to him in reuersion or remainder. Whereunto it is thus answered, That it is prouided by the Statute of W.2.ca.1. De donis conditionalibus, quod non habeant illi quibus tenementum sic fuerit datum potestatem alienandi, &c. Vpon these words the Sages of the Law haue construed the said Act according to the rule and reason of the Common Law, and that in diuers and sundrie variable manners. For some Alienations of Tenant in taile, they haue adiudged voydably by the Issue in taile by action only: some at the election of the Issue in taile to auoyde it by Action, Entrie, or Clayme, some are meerely voyde by the death of the Tenant in Taile: which seuerall Constructions were made vpon the selfe same words aforesayd.

18.E.3.12.19.E.3.Bre.468 24.E.3.28.36.Ass.8. 22.R.2.Discon. 5.E.4.3. 4.H.7.17. 33.E.3. Formdon. & 13.H.7. Pl. Com. Smith & Stapletons case.

As for example, If Tenant in Taile make a Feoffement in fee, this driues the Issue in Taile to his Action, which is called in Law a Discontinuance, and this Construction was made, for that at the Common Law the Feoffement of an Abbot or Bishop, or of the husband seised in the right of his wife, did worke a Discontinuance, and did driue the Successor and the wife to their Action, and forecloſed them of their entrie: and as the entrie of the issue was taken away, so consequently of them in reuersion and remainder. Also if an Abbot, Bishop, or husband in the right of his wife, seised of a Rent, or of any other Inheritance that lieth in Graunt had aliened, it was in the election of the Successour or wife after the death of her husband to claime the rent, &c. or to bring an Action, for that alienation did not worke a Discontinuance, and so it is by construction in case of Tenaunt in Tayle. Lastly, If the Abbot, Bishop, or Husband, had granted a Rent newly created out of the land &c. to another in fee, this had vtterly ceased by their death; and so it is also by construction in case of Tenant in Taile. So as these words, (Non habent potestatem alienandi) doe worke these effects, viz. as to Lands, That a Feoffement barreth not the Issue, &c. of his Action, but worketh a Discontinuance to barre him of his Entrie: as to Rents or any thing in esse, that lie in grant, that the sayd words doe take away his power to make any Discontinuance: as to Rents, &c. newly created, that they take away his power to make them to continue longer than during his life.

But there is a diuersitie betweene an Alienation working a discontinuance of an estate which taketh away an entrie, and an Alienation working, diuesting or displacing of Estates which taketh away no entrie. As if there be Tenant for life, the remainder to A. in Tayle, the remainder to B. in fee, if Tenant for life doth alien in Fee, this doth diuest and displace the remainders, but worketh no discontinuance. And therein it is to be obserued, That to actie Discontinuance there is necessarie a diuesting, or displacing of the Estate, and turning the same to a right: for if it be not turned to a right, they that haue the Estate cannot be driuen to an Action. And that is the reason that such Inheritances as lie in Grant cannot by Grant be discontinued, because such a Grant diuesteth no Estate, but passeth onely that which he may lawfully grant, and so the estate it selfe doth discend, reuert, or remaine, as shall be sayd hereafter in this Chapter.

A. maketh a gift in Taile to B. who maketh a gift in Taile to C. C. maketh a Feoffement in Fee and dieth without Issue, B. hath Issue and dieth, the Issue of B. shall enter, for albeit the Feoffement of C. did discontinue the reuersion of the Fee simple which B. had gayned vpon the Estate taile made to C. yet could it not discontinue the right of Intaile which B. had, which was discontinued before: and therefore when C. died without Issue, then did the discontinuance of the estate Taile of B. which passed by his Liuerie, cease, and consequently the entrie of the Issue of B. lawfull, which case may open the reason of many other cases.

Also note, That a Discontinuance made by the husband, did take away the entrie onely of the wife and her heires by the Common Law, and not of any other which claimed by title paramount aboue the Discontinuance. As if Lands had beene giuen to the husband and wife and to a third person, and to their heires, and the husband had made a Feoffement in Fee, this had beene a discontinuance of the one moitie, and a disseisin of the other moitie: if the husband had died, and then the wife had died, the suruiuor should haue entred into the whole, for her claimed not vnder the discontinuance, but by title paramount from the first Feoffor, and seeing the right by Law doth suruiue, the Law doth giue him a remedie to take aduantage thereof by entry, for other remedie for that moitie he could not haue.

¶ *Fee, ou Fee taile.* And so it is of an estate for life.

Sect. 598.599.600.

¶ Item si Tenant en Taile soit disseisie, et il relessa per son

ALso if Tenant in Taile be disseised, and he releaſe by his

ſon fait a le Diſſeiſor et a ſes heires tout le droit, le quel il ad en meſme les tenements, ceo nē pas diſcontinuance, pur ceo que rien de droit paſſa al Diſſeiſor forſque pur terme de vie del tenant en le Taile que fiſt le Releaſe, &c.

Deed to the Diſſeiſour and to his heires all the right which he hath in the ſame Tenements, this is no diſcontinuance, for that nothing of the right paſſeth to the Diſſeiſor, but for terme of the life of tenant in Taile, which made the releaſe, &c.

Sect 599.

¶ MEs per feoffment del tenant en le Taile, fee ſimple paſſa per meſme le feoffement per force de Liuerie de ſeiſin, &c.

BVt by the Feoffement of Tenaunt in Taile, Fee ſimple paſſeth by the ſame Feoffement by force of the Liuerie of Seiſin, &c.

Sect. 600.

¶ MEs per force dun releaſe rien paſſera forſque le droit que il poet loyalmēt, & droituralment releſſer, ſans leyd ou damage as auters perſons q̄x ent aueront droit apres ſon deceaſe, &c. Iſſint il eſt graund diuerſitie perenter vn Feoffement dun tenant en le taile, et vn Releaſe fait per tenant en le taile.

BVt by force of a Releaſe nothing ſhall paſſe but the right which he may lawfully and rightfully releaſe, without hurt or damage to other perſons who ſhall haue right therin after his deceaſe, &c. So there is great diuerſitie betweene a Feoffement of Tenant in Taile, and a releaſe made by Tenant in Taile.

¶ OVr Author hauing put examples of Eſtates paſſing by tranſmutation of an Eſtate and poſſeſſion, doth in this and the two Sections following put a diuerſitie betweene a Feoffement and a releaſe or confirmation of a bare right: for it is a rule in Law, That the Diſſeiſee or any other that hath a right onely by his Releaſe or Confirmation, cannot make any diſcontinuance, becauſe nothing can paſſe thereby but that which may lawfully paſſe. But otherwiſe it is of a Feoffment in reſpect of the Liuerie of Seiſin, for that it is the moſt ſolemne and common aſſurance in the Countrie, and to be maintained for the common quiet of the Realme: and by the Feoffement the Freehold (which is ſo much eſteemed in Law) doth paſſe by open Liuerie to the Feoffee, and by the releaſe a bare right.

9.E 4.18.12.E.4.11.
5.H.4.8.21.H.6.58.

Section 601.

¶ MEs il eſt dit, que ſi le tenant en taile en ceſt cas releſſa a ſon diſſeiſor, et oblige luy et ſes hēs

BVt it is ſaid, That if the Tenant in Taile in this caſe releaſe to his Diſſeiſor, and bind him and his heires to Warran-

¶ THe reaſon why the additiō of the warrantie in this caſe maketh a Diſcontinuance, is that which hath been ſayd, viz. If the Iſſue in Tayle ſhould enter, the warrantie (which is ſo much fauoured in Law) ſhould be deſtroyed, And

3.H.4.9.22.R.2.Diſcont.50
12.E.4.11.21.H.7.9.
43.E.3.8.15.E.4.111.Diſcont.30.

Vi.Sect. 596.602.639.658.

and therefore to the end that if Assets in Fee simple doe discend, he to whom the Release is made, may plead the same, and barre the Demandant: by which meanes all rights and advantages are saued. And that I may note it once for all, an (Il est dit) with Littleton, is as good as a Concessum in a Booke case.

a Garranty et mes, et ceste garranty discendist a son Issue, ceo est discontinuance per cause de le garrantie.

tie, and dieth, and this Warrantie discend to his Issue, this is a Discontinuance, by reason of the Warrantie.

Section 602.

¶ Mes si vn home ad Issue fits per sa Feme, et sa Feme morust, et puis il prent auter Feme, et tenements sont dones a luy et a sa second Feme, et a les heires de lour deux corps engendres, et ils ont issue vn auter fits, et l'second Feme morust, et puis le Tenant en le taile est disseisie, et il relessa al Disseisor tout son droit, &c. et oblige luy & ses heires a le garrantie, &c. et deuia, ceo nest pas discontinuance al issue en le Taile per l'second feme, mes il poit bien enter, pur ceo que le garrantie discendist a son eigne frere que son pier auoit per le primer feme, &c.

BVt if a man hath issue a Sonne by his Wife, and his Wife dieth, and after hee taketh another wife, and Tenements are giuen to him and to his second wife, and to the Heires of their two bodies engendred, and they haue issue another sonne, and the second Wife dieth, and after the Tenant in taile is disseised, and hee release to the Disseisor all his right, &c. and bind him and his heires to Warrantie, &c. and die, this is no Discontinuance to the Issue in Taile by the second wife, but he may wel enter, for that the Warrantie discendeth to his elder brother which his Father had by the first wife, &c.

Sect. 603.

¶ En mesme le manner est, lou tenements sont discendable a le fits puisne solonq; le custome de Burgh English, queux sont entailes, &c. et le tenant en le taile ad deux fits, & est disseisie, et il relessa a son Disseisor tout son droit oue garrantie, &c. et morust, le puisne fits poit enter sur le Disseisor, nient obstant le garrantie, pur ceo que le garrantie discendist al eigne fits, car touts foits le Garrantie

IN the same manner is it, where Lands are discendible to the youngest sonne after the Custome of Burrough-English, which are entayled, &c. and the Tenaunt in Taile hath two sonnes, and is disseised, and he releaseth to his Disseisour all his right with Warrantie, &c. and dieth, the younger sonne may enter vpon the Disseisor notwithstanding the Warranty, for that the Warrantie discendeth to the elder son: for always the War-

tie discendera a celuy q̄ est heire per le common ley.

rantie shall discend to him who is heire by the Common Law.

¶ By these two examples in this and the Section next following, it appeareth that a warrantie being added to a release or Confirmation, and discending vpon him that right hath to the Lands maketh a Discontinuance, otherwise it is out of the reason of the Law, and worketh no Discontinuance if the warrantie discendeth vpon another.

¶ *Oue garrantie, &c.* Here is implyed that he doth bind him and his heires to warrant to the releasee and his heires.

¶ *Touts foits le garrantie discendist sur le heire al Common ley.* This is a Maxime of the Common Law, and hereof more shall be said in the Chapter of Warrantie. Sections 718.735.736.737. so as it is not the warrantie only that maketh a discontinuance, but the warrantie and the Discent vpon him that right hath together.

13.H.4.Garrantie 94.
19.R.2.Garrantie 100.

Sect. 604.

¶ Item si vn Abbe soit disseisie, & il releasa a l' disseisor ouesque garrantie, č nest pas discontinuance a son successor, pur ceo que rien passa per cel releas, forsque le droit que il ad durant le temps que il est Abbe, & le Garrantie est expire per son priuation, ou per sa mort.

ALso if an Abbot bee disseised and hee releaseth to the disseisor with warrantie, this is no Discontinuance to his successor, because nothing passeth by this release but the right which hee hath during the time that he is Abbot, and the Warrantie is expired by his priuation, or by his death.

¶ The reason hereof yelded by Littleton is for that the warrantie is expired by his priuation or death.

¶ *Per son priuation ou per sa mort.* Note, that priuation is here resembled to death, and so is translation also. Wherein this diuersitie is worthy of obseruation, that when a Bishop, &c. make an estate, lease, grant of a Rent charge, warrantie, or any other Act which may tend to the diminution of the reuenues of the Bishoprick, &c. which should maintaine the successor, there the priuation or translation of the Bishop, &c. is all one with his death. But where the Bishop is Patron and Ordinarie, and confirmeth a Lease made by the Parson without the Deane and Chapter, and after the Parson dieth, and the Bishop collateth another, and then is translated, yet his Confirmation remayneth good; for the Reuenues that are to maintaine the Successor are not thereby diminished. And the like diuersitie doth hold in case of resignation, notwithstanding (m) the authority to the contrary.

Vide 29.E.3.16.

(m) 29.E.3.16.sic. grant vg.

Sect. 605.

¶ Item si home seisie en droit sa feme est disseisie, & il releasa, &c. oue garrantie, ceo nest pas discontinuance a la feme si ele ne survesquist son baron, mes que el poit enter &c. Causa patet.

ALso if a man seised in the right of his Wife be disseised, and he releaseth, &c. with warrantie, this is no discontinuance to the wife if shee surviueth her husband, but that she may enter, &c. *Causa patet.*

¶ This is evident, vnless the wife be heire to the husband (as by law shee may bee) and then it is a discontinuance for the cause aforesaid.

Section 606.

¶ Item ſi tenant en taile de certaine terre, leſſa meſme la terre a vn auter pur terin des ans, per force de quel le leſſee ent eit poſſeſſion, en quel poſſeſſion le tenant en taile per ſon fait releſſa tout le droit que il auoit en meſme le terre, a auer & tener a le leſſee & a ſes heires a touts iours ceo neſt pas diſcontinuance, mes apres le deceaſe l' tenant en taile ſon iſſue poit bien enter, pur ceo que per tiel releas riens paſſa forſque pur terme de la vie de le tenant en le taile.

ALſo if Tenant in tayle of certaine Land letteth the ſame Land to another for tearme of yeares, by force whereof the Leſſee hath thereof poſſeſſiō, in whoſe poſſeſſion the Tenant in tayle by his Deed releaſeth all the right that he hath in the ſame Land. To haue and to hold to the Leſſee and to his heires for euer. This is no diſcontinuance, but after the deceaſe of the Tenant in tayle, his iſſue may well enter, becauſe by ſuch Releaſe nothing paſſeth but for tearme of the life of the Tenant in tayle.

¶ *Car per tiel releas riens paſſa.* Here is one of the maxims of the Common Law rehearſed by our Author, whereof hee doth put diuers examples hereafter.

Sect. 607.

¶ En meſme le manner eſt, ſi le tenant en le taile, confirma leſtate le leſſee pur terme des ans, a auer & tener a luy & a ſes heires, ceo neſt pas diſcontinuance, pur ceo que riens paſſa per tiel confirmation forſque leſtate que le tenant en le taile auoit pur terme de ſa vie, &c.

IN the ſame manner it is if the Tenant in tayle confirme the eſtate of the Leſſee for yeares. To haue and to hold to him and to his heires, this is no diſcontinuance, for that nothing paſſeth by ſuch Confirmation, but the eſtate which the Tenant in tayle hath for tearme of his life, &c.

¶ *Riens paſſa per tiel confirmation.* Here is another of the maxims of the Common Law rehearſed by our Author, whereof he putteth examples hereafter.

More ſhall be ſaid hereof in the next Section following.

Section 608.

¶ Item ſi tenant en taile apres tiel leas granta le reuerſion en fee per ſon fait a auter, & voile que

ALſo if tenant in taile after ſuch leaſe grant the reuerſion in fee by his Deed to another, and wil-

que apres le terme fine, q̃ meſme le terre remaindroit a le grantee et a ſes heires a touts iours, & le tenant a term̃ dans atturna, ceo neſt pas diſcontinuance. Car tiels choſes queux paſſont en tiels caſes de tenant en le taile tantſolement per voy de graunt, ou per confirmation, ou per tiel releaſe, rien poit paſſer pur faire eſtate a celuy a que tiel graunt, ou confirmatiõ, ou releaſe eſt fait forſque ceo que le tenant en taile poit droiturelment faire, et ceo neſt forſque p̃ terme de ſa vie, &c.

leth that after the terme ended, that the ſame land ſhall remaine to the grantee and his heires for euer, and the tenant for yeares attorne, this is no diſcontinuance. For ſuch things which paſſe in ſuch caſes of tenant in taile only by way of grant, or by confirmation or by ſuch releaſe, nothing can paſſe to make an eſtate to him to whom ſuch grant, or confirmation or releaſe is made, but that which the tenant in taile may rightfully make, and this is but for terme of his life,&c.

Sect. 609.

Car ſi ieo leſſa terre a vn hom pur terme de ſa vie, &c. et le tenant a terme de vie leſſe meſm̃ la terre a vn auter pur terme des ans, &c. et puis mon tenant a terme de vie graunta le reuerſiõ a vn auter en fee, et le tenant a terme des ans atturna, en ceſt caſe le grantee nad en le franktenement forſq; eſtate pur terme de vie ſon grauntor, &c. & ieo que ſuis en le reuerſion de fee ſimple, ne puiſſe enter per force de cel grant del reuerſion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon reuerſion neſt pas diſcontinue, mes tout temps demurt a moy, ſicome il fuit adeuant, nient obſtant tiel grant del reuerſion fait al grantee a luy et a ſes heires, &c. pur ceo que riens paſſa per force de tiel grant forſque eſtate que le grantor auoit, &c.

For if I lett land to a man for terme of his life,&c. and the tenant for life letteth the ſame land to another for terme of years, &c. and after my tenant for life grant the reuerſion to another in fee, and the tenant for yeares attorne, in this caſe the grantee hath in the freehold but an eſtate for terme of the life of his grantor,&c. And I which am in the reuerſion of the fee ſimple may not enter by force of this grant of the reuerſion made by my tenant for life, for that by ſuch grant my reuerſion is not diſcontinued, but alwayes remaine vnto me as it was before notwithſtanding ſuch grant of the reuerſion made to the grantee, to him and to his heires,&c. becauſe nothing paſſed by force of ſuch grant, but the eſtate which the grantor hath,&c.

Sect. 610.

¶ En meisme le maner est, si le tenant a terme de vie, per son fait confirme lestate son lessee pur terme des ans, a auer et tener a luy et a ses heires, ou relessa a son lessee et a ses heires, vncore l'lessee a terme dans nad estate forsque pur terme de vie de le tenant a terme de vie, &c.

¶ IN the same manner is it, if tenant for terme of life by his Deed confirme the estate of his Lessee for yeares, To haue and to hold to him and his heires, or release to his Lessee and his heires, yet the Lessee for yeares hath an estate but for terme of the life of the tenant for life, &c.

¶ *Car tiels choses que passont en tiels cases de tenant en le taile, &c.* Here is rehearsed another Ancient maxime of the Common Law touching Grants, and hereby it appeareth that a Feoffment in fee (albeit it be by Parol) is of a greater operation and estimation in Law, then a grant of a reuersion by Deed though it be enrolled and Attornement of the Lessee for yeares of a Release, or a Confirmation by Deed for the reasons aforesaid. And this is manifested by the Examples which our Author here in these three Sections putteth.

Sect. 611.

¶ F*orsque estate per term dans, &c.* Here it is implyed that albeit the feoffment made by Lessee for yeares be a feoffment betweene the Feoffor and feoffee, and that by this feoffment the fee simple passeth by force of the liuery, yet is it a disseisin to the Lessor. And here it is worthy to be obserued, that our Author saith that Tenant for terme of yeares may make a feoffment, wherevpon it followeth, that the Feoffor may thereunto annexe a Warrantie, wherevpon the Feoffee may vouch him, but of this you shall reade more in the Chapter of Warranties, Sect. 698.

¶ MEs auterment est quant tenãt a terme de vie, fait vn feoffmẽt en fee, car per tiel feoffment le fee simple passa. Car tenant a termẽ dans poit faire feoffment en fee, et per son feoffment le fee simple passera, et vncore il nauoit al temps del feoffment fait forsque estate pur terme dans, &c.

BVt otherwise it is when tenant for life maketh a feoffment in fee, for by such a feoffment the fee simple passeth. For tenant for yeares may make a feoffment in fee, and by his feoffment the fee simple shall passe, and yet he had at the time of the feoffment made but an estate for terme of yeares, &c.

Sect. 612.

¶ ITem si ten̄ en le taile granta son terre a vn auter pur terme de vie de meisme le tenant en taile, et liuer a luy seisin, &c. et apres per son fait il relessa a le tenant et a ses heires tout le droit

ALso if tenant in taile grant his land to another for terme of the life of the said tenant in taile and deliuer to him seisin, &c. and after by his Deed hee releaseth to the tenant and to his heires all the

droit que il auoyt en meisme la terre, en cest cas lestate del tenãt de la terre nest pas enlarge per force de tiel releas, pur ceo que quant le tenant auoit lestate en le terre pur terme de vie de le tenant en le taile, donque il auoit tout le droit que le tenant en le taile puissoit droiturelment grãter ou releller, issint que per tiel releas nul droit passa, entant que son droit fuit ale deuant.

right which hee hath in the same land, In this case the estate of the tenant of the land is not enlarged by force of such release, for that when the tenant had the estate in the land for terme of the life of the tenant in taile, hee had then all the right which tenant in taile could rightfully grant or release. So as by this release no right passeth, inasmuch as his right was gone before.

Sect. 613.

¶ Item si tenant en le taile per son fait grant a vn auter tout son estate que il auoit en les tenits a luy tailes, a auer et tener tout son estate al auter et a les heires a touts iours, et delivera a luy seisin accordant, en cest cas le tenant a que lalienation fuit fait, nad auter estate forsque pur terme de vie del tenant en taile, et issint il poit bien estre proue, que le tenant en taile ne poit pas graunter, ne aliener, ne faire ascun droiturel estate de franktenement a auter person, forsque pur terme de sa vie demesne, &c.

ALso if tenant in taile by his Deed grant to another all his estate which hee hath in the tenements to him entailed, To haue and to hold all his estate to the other, and to his heires for euer, and deliuer to him seisin accordingly. In this case the tenant to whom the alienation was made hath no other estate but for terme of the life of tenant in taile. And so it may bee well proued, that tenant in taile cannot grant nor alien, nor make any rightfull estate of freehold to another person, but for terme of his owne life only, &c.

¶ The meaning of Littleton in both these cases in this and in the Section next preceding is, that hauing regard to the issue in taile, and to them in reuersion or remainder, Tenant in taile cannot lawfully make a greater estate then for terme of his life, and therefore this Release or Grant is no Discontinuance. But in regard of himselfe this Release or Grant leaueth no reuersion in him, but put the same in abeiance, so as after this Release or Grant made he shall not haue any action of waste, &c. 13.H.7.10.a. Brooke Releases 95.

¶ *Grant tout son estate, Vid.Sect.650.* Action of waste, &c. there is implyed that he shall not enter for a forfeiture if after the Release or Grant the Lesee maketh a feoffment in fee.

Sect. 614.

¶ Car si ieo done Terre a vn home en taile, sauant

FOr if I giue land to a man in taile, sauing the reuersion to my

¶ HEre Littleton proueth, that the feoffee of Tenant in Taile hath no rightfull estate hauing

hauing reſpect to two perſons, the one is to the Donor, whoſe reuerſion is diueſted and diſplaced, and the other to the Iſſue in Taile, who is driuen to his Action to recouer his Right.

A tort luy deforce.

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word, for it ſignifieth, To withhold lands or tenements from the right owner, in which caſe either the entrie of the right owner is taken away, or the Deforcer holdeth it ſo faſt, as the right owner is driuen to his reall Præcipe, wherein it is ſayde, Vnde A. eum iniuſtè deforceat, or the Deforcer ſo diſturbeth the right owner, as hee cannot enioy his owne: and therefore it is ſayd, Per hoc autem quod dicitur in breui vltimæ præſentationis deforceant, videtur quibuſdam quod querens innuat per hoc quod deforcians ſit in ſeiſina, ſicut in breui de recto, ſed reuera non eſt ita, ſed ſatis deforceat qui poſſeſſorem vti ſeiſina non permiſerit omnino vel minus commode impediat præſentando, appellando, impetrando ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui vti non permiſit poſſeſſorem vel minus commode licet omnino non expellat. In this caſe that Littleton putteth, the Diſcontinuee being in by wrong, is no Diſſeiſor, Abator, or Intruder, but a Deforcer, and hereof commeth Deforcement, and thus did Antiquitie deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market, ou ailors, & retorne, & ne poet auer entre eins eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a deforcement of the Lands or Tenements, but now it generally extended to all kind of wrongfull withholding of Lands or Tenements from the right owner. There is a Writt called a Quod ei deforceat, and lieth where Tenant in Taile, or Tenant for life, looſeth by default, by the Statute he ſhall haue a Quod ei deforceat againſt the Recoueror, and yet he commeth in by courſe of Law.

(n) Bract. li.4.fo 238. Flet. li.5.ca.11.

Bract. & Flet. vbi ſupra.

(o) Mir. ca.2.§.15.

Weſt.2.ca.4.

Sect. 615.

ITem ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le Taile, ſi celuy en le remainder voile graunter ſon remainder a vn auter en fee per ſon fait, et le Tenant a terme de vie atturna, ceo neſt pas diſcontinuance de le remainder.

ALſo if Land bee let to a man for terme of his life, the remainder to another in Taile, if he in the remainder will grant his remainder to another in Fee by his Deed, and the Tenaunt for life attorne, this is no diſcontinuance of the Remainder.

Sect.

Sect. 616.

¶ Item si home ad Rent seruice ou Rent charge en Taile, et il granta le dit Rent a vn auter en fee, et le tenaunt attorna, ceo nest pas Discontinuance, &c.

ALso if a man hath a Rent seruice or Rent charge in Taile, and hee graunt the sayd Rent to another in Fee, and the Tenaunt attorne, this is no Discontinuance, &c.

Sect. 617.

¶ Item si home soit Tenant en Taile de vn aduowson en grosse, ou de vn Common en grosse, sil per son fait poile graunt laduowson, ou le Common a vn auter en fee, ceo nest pas discontinuance. Car en tiels cases les Grantees nont estate forsque pur terme de vie de le Tenant en Taile que fist le Grant, &c.

ALso if a man bee Tenaunt in Taile of an Aduowson in Grosse, or of a Common in grosse, if he by his Deed will graunt the Aduowson or Common to another in Fee, this is no Discontinuance; for in such cases the Grauntees haue no estate but for terme of the life of Tenant in Taile that made the Grant, &c.

¶ By the cases in these three Sections it appeareth, That if a Remainder or a Rent seruice, or a Rent charge, or an Aduowson, or a Common, or any other Inheritance that lieth in Grant, be granted by Tenant in Taile, it is no Discontinuance, as formerly hath beene sayd.

Bract. li.2. fo 53. & fo.368. 378 Brit fo.187. Mir.ca.3. §.17. Flet.li.3.ca.15.

(p) Note, here is an Aduowson named by Littleton, as a thing that lieth in Grant, and passeth not by Liuerie of Seisin.

(p) *5.E.3.58. 21.E.3.37.38 43.E.3.1.b. 11.H.6.4. 5.H.7.37. 18.H.8. 16.El.Dy.323.b.*

Section 618.

¶ Et nota, que de tiels choses que passont per voy de graunt per Fait fait en pays, et sans liuerie, la tiel graunt ne fait pas discontinuance, come en les cases auantdits, & en auter cases semblables, &c. et coment que tiels choses sont graunts en Fee per fine leuie en le Court

AND note that of such things as passe by way of grant, by Deed made in the Countrie, and without Liuery, there such Grant maketh no discontinuance, as in the cases aforesayd, and in other like cases, &c. And albeit such things bee graunted in Fee, by Fine leuied in the Kings Court, &c.

¶ Here is the generall reason yelded of the precedent cases and the like, for that it is a Maxime in Law, That a Grant (d) by Deed of such things as doe lie in Graunt, and not in Liuerie of Seisin, doe worke no discontinuance. But the particular reason is, for that of such things the Grant of Tenant in Tayle worketh no wrong, either to the Issue in Taile, or to him in reuersion or remainder, for nothing doth passe but onely during the life of Tenant in Taile, which is lawfull, and euery discontinuance worketh a wrong, as hath beene sayd.

(d) *6.E.3.58 32.E.3. Discont.2.33. Ass.8.4.H.7.17. 21.H.7.42.15.H.7.19. 21.H.6.52.53.5.E.4.3. 21.E.4 5.22.R.2.Distress.56 38.H.8.Distress.35 Brooke. 19.E.3.Bre.468.Pl.Com. 435. 18.Ass.p.2.*

(q) If

(q) 13.E.3.Formd.47. 13.H.7.10. 36.Ass 8. 4.H.7.17.

(q) If Tenant in Tayle of a Rent seruice, &c. or of a Reuersion, or Remainder in Taile, &c. grant the same in Fee with Warrantie, and leaueth Assets in Fee simple, and dieth, this is neither barre nor discontinuance to the Issue in Taile, but he may distraine for the Rent or seruice, or enter into the land after the decease of Tenant for life. But if the Issue bringeth a Formedon in the Discender, and admit himselfe out of possession, then he shal be barred by the Warrantie and Assets.

le Roy, &c. uncore ceo ne fait discontinuance, &c.

yet this maketh not a Discontinuaunce, &c.

(r) 3.H.7.12.

(r) Tenant in Taile of a Rent dissetseth the Tenant of the Land, and maketh a Feoffement in Fee with warrantie and dieth, this is no discontinuance of the Rent, but the Issue may distreyne for the same, and albeit the warrantie extend to the Rent, yet by the rule of Littleton, it lieth not in Discontinuance: and where the thing doth lie in Actuerie, as Lands and Tenements, yet if to the conueyance of the Freehold or Inheritance, no Actuerie of Seisin is requisite, it worketh no discontinuance. (f) As if Tenant in Taile exchange lands, &c. or if the King being Tenant in Taile, grant by his Letters Patents the Lands in Fee, there is no Discontinuance wrought.

9.E.4.22.

(f) 38.H.8.Paten.Br.101. Pl.Com.233. Ls.1 fo.26. Alton Woods case.

¶ *Per Fine.* **Of a thing that lieth in Grant, though it bee granted by Fine, yet it worketh no Discontinuance, and this is regularly true.**

48.E.3.23.

(t) If Tenant in Taile make a Lease for yeares of Lands, and after leuie a Fine, this is a Discontinuance, for a Fine is a Feoffement of Record, and the Freehold passeth. But if tenant in Taile maketh a Lease for his owne life, and after leuie a Fine, this is no Discontinuance, because the Reuersion expectant vpon a state of Freehold which lieth onely in Grant passeth thereby.

(t) 15.E.4.tit.Discont.30.

6.E.6.57.

Sect. 619.

¶* **NOta, si ieo done terre a vn auter en taile, et il lessa mesme la terre a vn auter p̄ tme dans, et puis le Lessor graunta le reuersion a vn auter en fee, et le tenant a terme dans atturna al Grantee, et le terme est expire durant la vie le tenant en taile, per que le Grantee enter, et puis le tenant en taile ad issue et vie, en ceo case ceo nest discontinuance, nient obstant que le Grant soit execute en la vie le Tenaunt en Taile, pur ceo que al temps de Lease fait a terme dans nul nouel Fee simple fuit reserue en le Lessor, eins le Reuersion demurt a luy en Tail sicome il fuit deuant le Lease fait.** *

NOte, If I giue Land to another in Taile, and hee letteth the same land to another for terme of yeares, and after the Lessor graunteth the reuersion to another in fee, and the Tenant for yeares attorne to the Grantee, and the terme expireth during the life of the tenant in Tayle, by which the Grauntee enter, and after the Tenant in Taile hath Issue and die: in this case this is no Discontinuance, notwithstanding the Grant be executed in the life of the tenant in Taile, for that at the time of the Lease made for yeares, no new Fee simple was reserued in the Lessor, but the Reuersion remained to him in Taile, as it was before the lease made.

¶* This is added to Littleton, and not in the Originall, and therefore I purposely omit it: Yet is the case good in Law, because neither the Lease for yeares, nor the grant of the Reuersion diuesteth any Estate.

Sect. 620.

¶ MEs si le tenant ẽ taile fait leas a terme de vie le lessee, &c. en cest case le tenãt en le tayle ad fait vn nouel reuersion de fee simple en luy, pur ceo que quant il fist leas p̃ terme de vie, &c. il discontinua le taile, &c. p force de mesm̃ le leas, & auxy il discontinua ma reuersion, &c. & il couient que la reuersiõ de fee simple soit en ascun person ẽ tiel cas, et il ne poit estre en moy que sue donor, entant que mon reuersiõ est discontinue, Ergo il couient que la reuersiõ de fee soit en le tenant en le taile, que discontinua ma reuersion per tiel leas, &c. En si en cest case le tenant en le taile graunta per son fait cest reuersion en fee a vn auter, et le tenant a terme de vie attorna, &c. & puis le tenant a term̃ de vie morust, viuant l'tenant en le taile, et le grantee de le reuersion entra, &c. en la vie le tenant en le taile, donqz ceo est vn discontinuance en fee, & si apres le tenant en l'taile morust, son issue ne poit entrer, mes est mis a son br̃ de Forme-

BVt if the Tenant in taile make a lease for tearme of the life of the Lessee, &c. In this case the Tenant in tayle hath made a new reuersion of the fee simple in him, because when hee made the Lease for life, &c. he discontinued the tayle, &c. by force of the same Lease, and also hee discontinued my reuersion, &c. And it behoueth that the reuersion of the fee simple be in some person in such case. And it cannot be in me which am the donor inasmuch as my reuersion is discontinued, *Ergo* the reuersion of the fee ought to be in the tenant in tayle who discontinued my Reuersion by Lease, &c. And if in this case the Tenant in tayle grant by his Deed this Reuersion in fee to another, and the Tenant for life attorne, &c. and after the Tenant for life dieth, liuing the Tenant in taile & the grantee of the reuersion enter, &c. in the life of the Tenant in taile, then this is a discontinuance in fee, and if after the Tenant in tayle dieth, his issue may not enter, but is put to his Writ of *Formedon*.

¶ *Pur terme de vie del lessee, &c.* Here is implyed or for tearme of another mans life.

¶ *Nouel reuersion de fee simple.* Which must bee vnderstood of a fee simple determinable vpon the life of the Lessee, which our Author here calleth a fee simple, for if the Lessee dieth, the Donee is Tenant in tayle againe as he was before, and that is the reason that if in that case hee granteth ouer the reuersion and dieth, and after the death of Tenant in taile the Lessee dieth, the entry of the issue is lawfull, because by the death of the Lessee the Discontinuance is determined, and consequently the grant made of the reuersion gained vpon that discontinuance is void also. 15.E.4.Tit Discont.30.

If Tenant in tayle maketh a lease for three liues according to the Statute of 32.H.8. that is no discontinuance of the estate tayle or of the reuersion, because it is authorised by Act of Parliament whereunto euery man in iudgement of Law is partie. 32.H.8 cap.28.

And yet in some cases the freehold may bee discontinued and not the reuersion. (u) As if the husband and wife make a lease for life by Deed of the wiues Land reseruing a rent, the husband dieth, this was a Discontinuance at the Common Law for life, and yet the reuersion was not discontinued but remayned in the wife. Otherwise it is

(u) 38.E.3.32. 18.*Ass.* 2. 18.E.3.54. 22.H.6.24.

if the husband had made the Lease alone.

21.H.6.52. 15.E.4.tit. Discont. 30.

¶ *Et puis le tenant a terme de vie moruſt, &c.* The like Law it is if the tenant for life surrender to the Grantee, or if the Grantee recouer in an Action of waste, or enter for the forfeiture.

32.E.3.Discont 2. 43 E 3.Entr.Cong.31. 3.H 4.9. 22.R.2. discont 50 34.Ass.6 Pl.4 38. Ass 6 p. 6. 43. Ass 6.48.18.E.3.43. 21.H 6.52.15.E.4.tit Discontinuance 20.Brooke.tit.discont.3.& 14.4.H.7.17. 21.H.7.11.

¶ *Auoit ſeiſin & execution.* And here it is to be obſerued, that when the reuerſion in this caſe is executed in the life of Tenant in tayle, it is equiualent in iudgement of Law to a feoffment in fee, for the ſtate for life paſſed by liuery.

(w) 21.H.6.52.53.

(w) If Tenant in tayle make a leaſe for life, the remaynder in fee, this is an abſolute Diſcontinuance albeit the remaynder be not executed in the life of Tenant in tayle, becauſe all is one eſtate and paſſeth by one liuery. And ſo note a diuerſity betweene a grant of a reuerſion, and a limitation of a remaynder. B. Tenant in tayle maketh a gift in tayle to A. and after B releaſeth to A. and his heires, and after A. dieth without iſſue, the iſſue of the firſt Donee may enter vpon the collaterall heire, becauſe A. had not ſeiſin and execution of the reuerſion of the land in his Demeſne as of fee, as Littleton here ſpeaketh. But if Tenant in tayle make a leaſe for the life of the Leſſee, and after releaſeth to him and his heires, this is an abſolute Diſcontinuance, becauſe the fee ſimple is executed in the life of Tenant in tayle.

(y) 34.E.1.Quare Impedit 179. 22.E.3.6. 17.E.3.3. 33.E.3.Quare Imp.196. 23.Ass.8. 30.E.3.26.

(y) If Tenant in tayle of a Mannor whereunto an Aduowſon is appendant maketh a feoffment in fee by deed (as it ought to be) of one Acre with the Aduowſon, and the Church becommeth void, and the feoffee preſent, Tenant in tayle dieth, the Church becommeth voide, the iſſue ſhall not preſent vntill he hath recontinued the Acre. But if the feoffee had not executed the ſame by preſentment, then the iſſue in tayle ſhould haue preſented. And ſo was it at the Common Law of the husband ſeiſed in the right of his wife, mutatis mutandis

36.Ass.8. 42.E.3.20. 22.R.2.Discont. 50.

If a fine be leuied to a Tenant in tayle, and hee granteth and rendreth the Land to him and his heires and die before execution, this is no Diſcontinuance. Otherwiſe it is, if it had beene executed in the life of Tenant in tayle.

21.H.6.52.53. Brooke tit. Discontin.3. 21.H.7.11. Lib.1.fol.85. Lib.10.fol.96.97.

If Tenant in tayle make a Leaſe for life of the Leſſee, and after grant the Reuerſion with warrantie, and dieth before execution, this is no Diſcontinuance, becauſe the Diſcontinuance was (as hath beene ſaid) but for life, and the warrantie cannot enlarge the ſame.

(*) 15.E.4.Discont.30. Vide Bell.642.

¶ *Et ceo eſt per force del grant de meſme le tenant en tayle.* Hereupon Littleton himſelfe is of the ſame opinion, (*) as it appeareth he was in our Bookes, that if Tenant in tayle make a Leaſe for life, and grant the Reuerſion in fee, and the Leſſee attorne, and that Grantee granteth it ouer, and the Leſſee attorne, and then the Leſſee for life dieth, ſo as the Reuerſion is executed in the life of Tenant in tayle, yet this is no Diſcontinuance, but that after the death of Tenant in tayle the iſſue may enter, becauſe as Littleton here ſaith, he is not in of the grant of the Tenant in tayle, but of his Grantee.

If at this day Tenant in tayle make a Leaſe for life, and after by Deed indented and inrolled according to the Statute he bargaineth and ſelleth the Reuerſion to another in fee, and the Leſſee dieth, ſo as the Reuerſion is executed in the life of Tenant in tayle, albeit the bargainee is not in the per by the Tenant in tayle, yet in aſmuch as hee claymeth the Reuerſion immediately from him, which is executed in his life time, this is a Diſcontinuance. And ſo it is and for the ſame cauſe if Tenant in tayle had granted the Reuerſion to the vſe of another and his heires. If Tenant in tayle maketh a Leaſe for life, and after diſſeiſeth the Leſſee for life and maketh a feoffment in fee, the Leſſee dieth, and then Tenant in tayle dieth, albeit the fee be executed, yet for that the fee was not executed by lawfull meanes, (as in all the Caſes of Littleton it appeareth it ought to be) it is no Diſcontinuance.

And the cauſe is for that he which hath the grant of ſuch reuerſion in fee ſimple hath the ſeiſin and execution of the ſame lands or tenements. To haue to him and to his heires in his Demeſne as of fee in the life of the tenant in taile. And this is by force of the grant of the ſaid Tenant in tayle.

Sect.

Sect. 621.

¶ En meſme le manner ſerra, ſi en le caſe auantdit, le tenant a terme de vie apres lattournement al grantee vſt alien en fee, & le grantee vſt enter pur forfeiture de ſon eſtate, & puis le tenant en taile vſt deuie, ceſt vn diſcontinuance, Cauſa qua ſupra. ¶.

IN the ſame manner ſhall it be, if in the caſe aforeſaid the Tenant for tearme of life after the Attornement to the Grantee had aliened in fee, and the Grantee had entred by forfeiture of his eſtate, and after the Tenant in tayle had died this is a Diſcontinuance, *Cauſa qua ſupra.* ¶.

¶ This is added in this place, but in the Originall it commeth in after in this Chapter. 21.H.6.52.53. 15.E.4.Diſcont.30.

Section 622.

¶ Mes en ceſt cas, ſi tenāt en taile que granta le reuerſion, &c. mozuſt viuant le tenant a terme de vie, et puis le tenant a terme de vie mozuſt, & puis celuy a que le reuerſion fuit graunt enter, &c. donque ceo neſt pas diſcontinuance, mes que iſſu del tenant en taile poit bien enter ſur le grauntee del Reuerſion pur ceo que le Reuerſion que le grauntee auoit, &c. ne fuit executе, &c. en le vie le tenant en taile, &c. Et iſſint il eſt graund diuerſitie quant tenant en taile fait vn leas pur terme dans, & lou il fait leas pur terme de vie, car en lun cas il ad reuerſion en taile, & en lauter cas il ad vn reuerſion en fee.

BVt in this caſe if Tenant in taile that grants the reuerſion, &c. dieth liuing the tenant for life, and after the Tenant for life dieth, and after hee to whom the reuerſion was granted enter, &c. then this is no diſcontinuance, but that the iſſue of the tenant in tayle may well enter vpon the Grantee of the reuerſion, becauſe the Reuerſion which the Grantee had &c. was not executed, &c. in the life of the tenant in taile, &c. And ſo there is a great diuerſitie when Tenant in tayle maketh a Leaſe for yeares, and where hee maketh a Leaſe for life, for in the one caſe hee hath a reuerſion in tayle, and in the other caſe he hath a reuerſion in fee.

¶ Of this ſufficient hath beene ſaid before, and is of it ſelfe manifeſt and needeth no explication.

Like Law was at the Common Law of a husband ſeiſed of Land in right of his wife, Mutatis mutandis. 18.Aſſ.6. 21.H.6 53.

Sect. 623.

¶ CAr ſi terre ſoit done a vn hõe et a ſes heires males de ſon corps engendres, le quel ad iſſue deux fits, et leigne fits ad iſſue file et deux, et le teñ en taile fait vn leas pur terme des ans, et deux, ore le reuerſion diſcendiſt a le fits puiſne, pur ceo que le reuerſion fuit forſque en le taile, et le fits puiſne eſt heire male, &c. Mes ſi le tenant vſt fait vn leas pur terme de vie, &c. et puis morust, ore le reuerſion diſcendiſt a le file del eigne fits, pur ceo que le reuerſion eſt en fee ſimple, et la file eſt heire general, &c.

FOr if land bee giuen to a man and to his heires males of his body engendred, who hath iſſue two ſonnes, and the eldeſt ſonne hath iſſue a daughter and dieth, and the tenant in tayle maketh a leaſe for yeares and die, now the reuerſion diſcendeth to the younger ſonne, for that the reuerſion was but in the taile, and the youngeſt ſonne is heire male, &c. but if the tenant had made a leaſe for life, &c. and after died, now the reuerſion diſcend to the daughter of the elder brother, for that the reuerſion is in the fee ſimple, and the daughter is heire generall, &c.

This is euident also and needeth no explanation.

Section 624.

¶ ITem ſi home ſoit ſeiſie en taile de terres deuiſables per teſtament, &c. et il ceo deuiſa a vn auter en fee, et morust, et lauter enter, &c. ceo neſt pas diſcontinuance, pur ceo que nul diſcontinuance fuit fait en la vie del tenant en le taile, &c.

ALſo if a man be ſeiſed in taile of lands deuiſable by Teſtament, &c. and hee deuiſeth this to another in fee, and dieth and the other enter, &c. this is no diſcontinuance, for that no diſcontinuance was made in the life of the Tenant in taile, &c.

9.E.4.22. 20.H.6.14. Vid. 18.E.3.8.

¶ THis is manifeſt and needeth no explanation, Only this is to be obſerued, that no Diſcontinuance can be made by Tenant in taile, but ſuch as is made, and taketh effect in his life time, which is here implied in the (&c.)

Sect. 625.

ANd of this opinion is Littleton (a) in our bookes, and ſaith that ſo it was adiudged.

(a) 9.E.4.24.b.

¶ *Enfeoffe le donor, &c.* This must bee vnderſtood where the reuerſion of the Donor is immedi-

Lib.1.fo.140. in Chudleyes caſe

¶ ITem ſi terr̃ ſoit done en taile, ſauant le reuerſion al donor, et puis le tenãt en taile per ſon fait enfeoffa le donor,

ALſo if land be giuen in taile, ſauing the reuerſion to the Donor, and after the Tenant in taile by his deed enfeoffe the Do-

a auer et tener a luy et a ses heirs a touts iours, et liuer a luy seisin accordant, &c. ceo nest pas discontinuance, pur ceo que nul poit discontinuer lestate en le taile, si non q̃ il discontinue le reuersion celuy que ad le reuersion, &c. ou le remainder, si ascun ad le remainder, &c. & entant que per tiel feoffment fait a le donor (le reuersion a donq̃ esteant en luy) son reuersion ne fuit discontinue ne alterate, &c. cest feoffmẽt nest pas discontinuance, &c.

nor, To haue and to hold to him and to his heires for euer, and deliuer to him seisin accordingly, &c. this is no discontinuance, because none can discontinue the estate taile, vnlesse he discontinueth the reuersion of him who hath the reuersion, &c. or remainder, if any hath the remainder, &c. and in asmuch as by such feoffment made to the Donor (the reuersion then being in him) his reuersion was not discontinued nor altered, &c, this feoffment is no discontinuance, &c.

ately expectant vpon the estate of the Donee (b) for if a man make a Gift in taile the remainder in taile, reserving the reuersion to himselfe, In this case if the Donee enfeoffe the Donor, this is a discontinuance because there is a meane estate, and so doth Littleton here put his case of a reuersion immediately expectant vpon the gift in taile. Also it is to be intended of a feoffment made to the Donor soly or only, for if the Donee enfeoffe the Donor and a stranger, this is a discontinuance of the whole land.

(b) 41. Ass. 2. 42 E. 3. 2.

28. H. 8. Dim. 12.

But if Tenant for life make a Lease for his owne life to the Lessor, the remainder to the Lessor and an estranger in fee. In this case forasmuch as the limitation of the fee should worke the wrong, it enureth to the Lessor as a surrender for the one moyty, and a forfeiture as to the remainder of the stranger, for he cannot giue to the Lessor that which he had before, as our Author here saith, and as to the remainder to the stranger, it is a forfeiture for his moity, and when the Lessor entreth he shall take the benefit of it. But if two Joyntenants be, and one of them enfeoffe his Companion and a stranger, and make Liuery to the stranger, this shall dest only in the stranger, because the Liuery cannot enure to his Companion.

¶ *Nul poet discontinuer lestate en taile, sinon que il discontinue le reuersion, &c. ou le remainder, &c.* And therefore for this cause if the reuersion or remainder be in the King, the Tenant in taile cannot discontinue the estate tayle. (c) But Tenant in taile, the reuersion in the King, might haue barred the estate taile by a Common recouery vntill the Statute of 34. H. 8 ca. 20. which restrayneth such a Tenant in taile, but that common recouery neither barred nor discontinued the Kings reuersion.

40. Ass 36. 21. Ass. 38. 18. E. 3. 45. F. N. B. 142. 4. Pl Com. 555.

(c) 33. H. 8. tit. Taile. Br. 41. Pl. Com. vbi supra.

Note the reuersion may be reuested, and yet the Discontinuance remaine. (d) As if a Feme Couert be Tenant for life, and the husband make a Feoffment in fee, and the Lessor enter for the forfeiture, here is the reuersion reuested, and yet the Discontinuance remained at the Common Law.

(d) 27. Ass. p. 60. 29. Ass. 43. 11. Ass. 11. 16. Ass. 11. 18. E. 3. 45.

Sect. 626.

¶ EN meisme le maner est, lou terres sont dones a vn hõe en taile, le remainder a vn auter en fee, et le tenãt en taile enfeoffa celuy, que est en le remainder, a auer et tener a luy, et a ses heirs, ceo nest pas discontinuance, Causa qua supra.

IN the same manner is it where lands are giuen to a man in taile, the remainder to another in fee, and the tenant in taile enfeoffe him that is in the remainder, To haue and to hold to him & to his heire, this is no discontinuance, *Causa qua supra.*

¶ *Le remainder a vn auter.* Here it appeareth that (as hath bin said in case of a reuersion) that the remainder must be immediately expectant vpon the estate taile.

Sect. 627.

¶ ITem ſi vn Abbe ad vn Reuerſion ou Rent ſeruice, ou Rent charge, et voile graunter cel reuerſion, ou Rent ſeruice, ou Rent charge a vn auter en fee, et le tenant atturna, &c. ceo nē pas diſcontinuance.

ALſo if an Abbot hath a Reuerſion, or a Rent ſeruice, or a Rent charge, and he will grant this Reuerſion, or Rent ſeruice, or Rent charge to another in Fee, and the Tenant attorne, &c. this is no diſcontinuance.

Of Inheritances that lie in Grant, ſufficient hath beene ſayd before.

Section 628.

¶ EN meſme le manner lou Abbe eſt ſeiſie dun Aduowſon, ou de tielx choſes que paſſont per voy d grant ſans liuerie de ſeiſin, &c.

IN the ſame manner where an Abbot is ſeiſed of an Aduowſon, or of ſuch things which paſſe by way of Grant, without Liuerie of ſeiſin, &c.

¶ HEre it appeareth, (as hath beene ſayd) That an Aduowſon doth not lie in Liuery, but in Grant.

Section 629.

¶ ITem ſi Tenant en Taile leſſa ſa terre a vn auť pur terme de vie, et puis il graunta en fee le Reuerſion a vn auter, et le tenant atturna, & puis l tenant a terme de vie aliena en fee, et le Grantee de reuerſion entra, &c. en le vie le Tenant en le Taile, et puis le Tenant en le Taile mozuſt, ſon Iſſue ne poet enter, mes eſt mis a ſon Brieſe d Formedon, pur ceo que le Reuerſion en Fee ſimple que le Grauntoz auoit per le grant del tenant en le Taile, fuit execute en l vie de meſme le tenaunt en le Taile, et pur ceo eſt vn diſcontinuance en fee, &c.

ALſo if Tenant in Tayle letteth his Land to another for life, and after he granteth in Fee the Reuerſion to another, and the Tenant attorne, and after the Tenant for life alien in Fee, and the Grauntee of the Reuerſion enter, &c. in the life of the Tenant in Taile, and after the Tenant in Taile dieth, his Iſſue ſhall not enter, but is put to his Writ of *Formedon*, becauſe the Reuerſion in Fee ſimple which the Grauntor had by the Graunt of the Tenant in Tayle, was executed in the life of the ſame Tenant in Tayle, and therefore it is a diſcontinuance in Fee, &c.

Of this ſufficient hath beene ſayd before.

Sect.

Section 630.

¶ CEt nota que aſcuns font diſcontinuances p̄ terme de vie. Sicome Tenaunt en le taile fait vn Leaſe pur terme de vie, ſauant le reſiſion a luy, auxy longement que le reuerſion eſt al tenant en taile, ou a ſes heires, ceo neſt diſcontinuance, forſque durant la vie le tenant a terme de vie, &c. Et ſi tiel tenant en taile dona les tenements a vn auter en taile, ſauant le reuerſion, donques ceo eſt diſcontinuance durant le ſecond taile, &c.

AND note that ſome make diſcontinuances for terme of life. As if Tenant in Tayle make a Leaſe for life, ſauing the reuerſion to him as long as the Reuerſion is to the Tenaunt in Tayle or to his Heyres: This is no diſcontinuance but during the life of Tenaunt for life, &c. And if ſuch Tenant in Taile giueth the lands to another in Tayle, ſauing the Reuerſion, then this is a Diſcontinuance during the ſecond Tayle, &c.

¶ This is manifeſt, and hath beene handled before, and needeth no explanation, onely this is to be obſerued, where Littleton putteth hereafter cases of Diſcontinuances by Feoffement, &c. he hath a double entendment: Firſt, By Feoffement or by any other Conueyance which may make a Diſcontinuance. Secondly, (&c.) impliyth a Diſcontinuance by a gift in Taile, or a leaſe for life, &c.

Sect. 631.

¶ MEs lou le tenant en tayle fait vn leaſe pur terme dans, ou pur terme de vie, le remainder a vn auter en fee, et deliuer liuerie de ſeiſin accordant, ceo eſt diſcontinuance en fee, pur ceo que le Fee ſimple paſſa per force de liuerie de ſeiſin, &c.

BVt where the Tenant in Tayle maketh a Leaſe for yeares or for life, the remainder to another in Fee, and deliuereth Liuerie of Seiſin accordingly, this is a Diſcontinuance in Fee, for that the fee ſimple paſſeth by force of the Liuerie of Seiſin, &c.

This is euident alſo, and hereof ſufficient hath beene ſpoken before.

Sect. 632.

¶ CEt eſt aſcauoir, q̄ aſcuns tiels diſcontinuances ſont fait ſur condition, &c. et pur ceo que les conditions ſont enfreints, &c. ou pur

AND it is to be vnderſtood, That ſome ſuch Diſcontinuances are made vpon Condition, &c. and for that the conditions be broken, &c. or for

¶ *Diſcontinuances fait ſur Condition, &c.* Heere is to be vnderſtood a Diuerſity betweene a Condition in Deed, whereof Littleton here ſpeaketh, and a Condition in law, whereof ſomewhat hath beene ſayd before in this Chapter, viz.

viz. where the Feme is tenant for life, and the husband maketh a Feoffement in Fee, and the Lessor entreth for the Condition in Law.

¶ *Conditions sont enfreints, &c.* Here is implied, Or any cause given either by disabilitie of the feoffees, or by any condition performed on the part of the feoffor, or otherwise, whereby the state is in any sort anoyded.

¶ *Come si le Baron soit seisie de certain terre en droit sa feme, &c.* Here it appeareth, That for the Condition broken, the heire of the husband may enter, for albeit no right discend from the husband to his heire, yet the title of entry by force of the Condition which the husband created vpon the Feoffement, and reserued to him and his heires, doth discend to his heyre, and Littleton saith truly, That so it hath beene adiudged.

4.H 6.2.9.H.7.24.b. Lib.8.fo.43.44. Whittinghams case.

¶ *Sur le heire.* Nota, when the heire in this case hath entred for the Condition broken, and hath auoyded the Feoffement, the estate of the heire vanisheth away, and presently the Estate vesteth in the Feme or her heires, without any entrie or claime by her or them, for the heire entreth in respect of the Condition, vpon the reall Contract, and not of any right, as hath beene sayd, and if the husband himselfe had re-entred, the state had vested in his wife: And therefore where Littleton and our Bookes say, That the wife shall enter vpon the heyre, the meaning is, that after the re-entrie of the heire she may enter.

Whittinghams Case vbi supra.

auters causes, solonque le course d la ley, tiels estates sont defeates, donques sont les discontinuances defeates, et ne tollēt ascun home per force de eux, de son entrie, &c. Come si le Baron soit seisie de certē tre en droit sa Feme, et fait Feoffement en fee sur condition, et deuie, si le heire apres enter sur l'feoffee pur le Condition enfreint, lentrie la Feme est congeable sur le heire, pur ceo que per lentrie del heire le discontinuance est defeat, come est adiudge.

other causes, according to the course of Law such Estates are defeated, then are the Discontinuances defeated, and shall not by force of them take any man from his entrie, &c. As if the husband be seised of certaine land in right of his wife, and maketh a Feoffement in Fee vpon Condition, and dyeth, if the Heire after enter vpon the Feoffee for the condition broken, the entrie of the wife was cōgeable vpon the heire, for that by the entry of the heire the discontinuance is defeated, as is adiudged.

Sect. 633.

¶ The reason here rendred by Littleton, is, for that the husband cannot enter in his owne right, but in the right of his Wife; and the heire of the Husband cannot enter, for no right or title discends vnto him, and the wife in this case shall take benefit of the nonage of her husband, and enter into the land.

If an Infant be Tenant for another mans life, and make a Feoffement in fee, and Cesty que vie dieth, the Enfant himselfe shall not enter, because he hath no right at all.

¶ Item si Feme inheritrix q̄ ad vn Baron, quel Baron est deins age, et il est enant deins age fait vn Feoffement de les Tenements son fēe en fee, et morust, si ad este question, si la fēe poit entrer, ou non, &c. Et il semble a ascuns, que lentry la Feme

ALso if a Woman Inheritrix hath a husband who is within age, and hee beeing within age maketh a Feoffement of the Tenements of his wife in Fee, and dieth, it hath beene a question, If the Wife may enter or not, &c. And it seemeth to some, that the

feme apres la mort ſa baron, eſt congeable en ceſt cas. Car quant ſa baron feaſoit tiel feoffment, &c. il puiſſoit bien enter, nient contreſtant tiel feoffmẽt, &c. durãt la couerture, & il ne puiſſoit enter en ſon droit demeſne, mes en le droit la feme, Ergo tiel droit que il auoit dentrer en droit ſa feme, &c. ceſt droit dentrer demurt al feme apres ſon deceaſe.

entrie of the wife after the death of her Huſband is congeable in this caſe, for when her Huſband made ſuch feoffment, &c. he might well enter notwithſtanding ſuch feoffment, &c. during the couerture, and he could not enter in his owne right but in the right of his wife, *Ergo* ſuch right as hee had to enter in the right of his wife, &c. this right of entrie remayneth to the wife after his deceaſe.

If the husband within age take to wife feme tenant intayle generall, and the husband make a gift in tayle and dieth within age, in this caſe the wife may enter, as Littleton here holdeth, or the heire of the husband in reſpect of the new reuerſion diſcended vnto him may enter. But if the heire enter preſently thereupon his eſtate vaniſheth. If tenant in tayle being within the age of one and twenty yeres make a feoffment in fee, and after is attainted of felonie and dieth, the entry of the iſſue is not lawfull, for his entry is not lawfull in reſpect of his eſtate only, but of his blood alſo which is corrupted, and therefore in that caſe he is driuen to his Formedon.

If husband and wife be both within age, and they by Deed indented toyne in a feoffment reſeruing a rent, the husband dieth, the wife may enter or haue a Dum fuit infra ætatem. But if ſhe were of full age, ſhe ſhall not haue a Dum fuit infra ætatem, for the nonage of her husband, albeit they be but one perſon in Law.

14.E.3.Bro.282. 14.E.3. *Dum fuit infra ætatem 6.* F.N.B.192.

Sect. 634.

ET il y addee dit que ſi deux ioyntenants eſteãts deins age. font vn feoffment en fee, et lun des enfants deuy, et lauter ſuruesquiſt, entant que les ambideux enfants puiſſont enter ioyntment en lour vies, cel droit acruiſt tout a luy que ſuruesquiſt, et pur ceo, celuy q̃ ſuruesquiſt poit enter en lentiertie, &c. Et auxy lheire le baron que fiſt le feoffment deins age ne poit enter, &c. pur ceo que nul droit diſcendiſt a tiel heire en le cas auantdit, pur ceo que le baron nauoit vnques riens forſque en droit de ſa feme, &c.

AND it hath beene ſaid that if two Ioyntenants being within age make a feoffment in fee and one of the Infants die, and the other ſuruiueth in as much as both the Infants might enter ioyntly in their liues, this right accrueth all to him which ſuruiueth, and therefore hee that ſuruiueth may enter into the whole, &c. And alſo the heire of the husband which made the feoffment within age cannot enter, &c. becauſe no right diſcendeth to ſuch heire in the caſe aforeſaid, for that the husband had neuer any thing but in right of his wife, &c.

POet enter en lentiertie, &c. And the reaſon hereof is implyed in this (&c.) for that they may ioyne in a writ of right, and therefore the right ſhall ſuruiue. But they cannot ioyne in a Dum fuit infra ætatem, becauſe the nonage of the one

21.E.3.50.18.E.2.Bro.831 6.E.3.4. 9.H.6.5. 19.H.6.6. 39.H.6.42. 34.H.6.31. F.N.B.192.

See of this in the Chapter of Joyntenants.

one is not the nonage of the other. In this caſe if one Joyntenant had made a feoffment in fee and died, the right ſhould not haue ſuruiued, for the Joynture was ſeuered for a time. If two Joyntenants be, and the one is of full age. and the other within age, and both they make a feoffment in fee, and he of full age dieth, the Infant ſhall enter or haue a Dum fuit infra ætatem, but for the moitie.

Section 635.

¶ Et auxy quant vn enfant fait vn feoffment eſteant deins age ceo ne luy greeuera ne ledra, mes que il poit enter bien, &c. car ceo ſerroit encounter reaſon, que tiel feoffment fait per celuy que ne fuit able de faire tiel feoffment, greeuera ou ledera auter, de toller eux de lour entre, &c. Et pur ceux cauſes il ſemble a aſcuns, que apres la mort de tiel baron iſſint eſteant deins age al temps de le feoffment, &c. que ſa feme bien poit enter, &c.

AND alſo when an infant make a feoffment being within age, this ſhall neither grieue nor hurt him, but that hee may well enter, &c. for it ſhould be againſt reaſon that ſuch feoffment made by him that was not able to make ſuch a feoffment, ſhall gricue or hurt another to take them from their entry, &c. And for theſe reaſons it ſeemeth to ſome, that after the death of ſuch husband ſo being within age at the time of the feoffment, &c. that his wife may well enter, &c.

Bell fol.14. Britton fol.88.a. Fleta lib.3.cap.3.

¶ *Mes que il poet enter bien, &c.* Here is implyed that he might enter either within age, or at any time after full age, and likewiſe after his death his heire may enter. Meliorem enim conditionem facere poteſt minor deteriorem nequaquam.

Nota, A ſpeciall heire ſhall take aduantage of the infancie of the Anceſtor. As if Tenant in tayle of an Acre of the cuſtome of Borow English make a feoffment in fee within age, and dieth, the yongeſt ſonne ſhall auoyd it, for he is priuie in blond, and claymeth by diſcent from the Infant.

And ſo if Tenant in tayle to him and the heires females of his bodie make a feoffment in fee and dieth within age, hauing iſſue a ſonne and a Daughter, the Daughter ſhall auoyd the feoffment. And ſo note that a cauſe to enter by reaſon of Infancy is not like to Conditions, warranties, and Eſtoppels, which euer diſcend to the heire at the Common Law.

The reſidue of this Section vpon that which hath beene ſaid is euident.

Section 636.

¶ *Surrender.* Surſum redditio properly is a yeelding vp of an eſtate for life or yeares to him that hath an immediate eſtate in reuerſion or remaynder, wherein the eſtate for life or yeares may dzowne by mutuall agreement betweene them.

¶ Item ſi feme enheritrix prent baron, et ont iſſue fits, et l' baron morust, & el prent auter baron, et le ſecond baron leſſa la terre que il ad en droit ſa feme a vn auter

ALſo if a woman inheritrix taketh husband, and they haue iſſue a ſonne, and the husband dieth, and ſhe takes another husband, and the ſecond husband letteth the Land which he

ter pur terme de ſa vie, et puis la feme morust, et puis le tenant a terme de vie ſurrendiſt ſon eſtate a le ſecond baron, &c. Quære ſi le fits le feñ poit enter en ceſt cas ſur le ſecond baron durant la vie le tenant a terme de vie, &c. Mes il eſt cleere ley, q̃ apres la mort le tenant a terme de vie, le fits la feme poit enter, pur ceo que l' diſcontinuance que fuit tantſolemẽt pur terme de vie, eſt determine, &c. per la mort de meſme le tenant a terme de vie.

hath in right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for life ſurrendreth his eſtate to the ſecond huſband, &c. *Quere* if the ſonne of the wife may enter in this caſe vpon the ſecond husband during the life of tenant for life, &c. but it is cleere Law, that after the death of the Tenant for life the ſon of the wife may enter, becauſe the diſcontinuance which was only for terme of life, is determined, &c. by the death of the ſame Tenant for life.

Note there be three kinde of Surrenders, viz. a Surrender properly taken at the Common Law, which is here before diſcribed, and whereof Littleton ſpeaketh. Secondly, a Surrender by cuſtome of lands holden by Copie, or of cuſtomary eſtates whereof you haue read before, Sect. 74. and a Surrender improperly taken (as appeare before, Sect. 550.) of a Deed. And ſo of a Surrender of a Patent, and of a Rent newly created, and of a fee ſimple to the King.

2. *Eliz. Dier* 176. 14. *H.*7.3. 27. *Aſſ.*37. 49. *E.*3.2. 11. *H.*4.2. 12. *H.*4.21. 13. *H.*4.13.

A Surrender properly taken is of two ſorts, viz. a ſurrender in Deed, or by expreſſe words, (whereof Littleton here putteth an example) and a ſurrender in Law wrought by conſequent by operation of Law. Littleton here putteth his caſe of a Surrender of an eſtate in poſſeſſion, for a Right cannot bee ſurrendred. And it is to be noted that a ſurrender in Law is in ſome caſes of greater force, then a ſurrender in Deed. As if a man

14 *H.*8.15. 37. *H.*6.17. 21. *H.*7.6. 40. *E.*3.24. 31. *Aſſ.*26. 50. *E.*3.6. 44. *Aſſ* 3. 35 *H.*8. *Dier* 37. 8. *Aſſ.*20. 4. *Ma.. Dier* 141 11. *Eliz. Dier* 280.

6. *H.*7.9. 37. *H.*6.17. 21. *H.*7.6. 14. *H.*7.4. *Lib.*6. *fo.*63. *Sir Moyle Finches caſe.*

make a Leaſe for yeares to begin at Michaelmaſſe next, this future intereſt cannot bee ſurrendred, becauſe there is no Reuerſion wherein it may drowne, but by a Surrender in Law it may be drowned. As if the Leſſee before Michaelmaſſe takes a new Leaſe for yeares either to begin preſently, or at Michaelmaſſe, this is a Surrender in Law of the former Leaſe, Fortior & æquior eſt diſpoſitio legis quam hominis.

Alſo there is a ſurrender without Deede, whereof Littleton putteth here an example of an eſtate for life of lands, which may be ſurrendred without Deed, and without Liuery of ſeiſin, becauſe it is but a yeelding, or a reſtoring of the ſtate againe to him in the immediate reuerſion or remainder, which are alwayes fauoured in Law. And there is alſo a ſurrender by Deed, and that is of things that lye in grant, whereof a particular eſtate cannot commence without Deed, and by conſequent the eſtate cannot be ſurrendred without Deed. But in the example that Littleton here putteth, the eſtate might commence without Deed, and therefore might be ſurrendred without Deed. And albeit a particular eſtate be made of lands by Deed, yet may it be ſurrendred without Deed, in reſpect of the nature and quality of the thing demiſed, becauſe the particular eſtate might haue beene made without Deed; and ſo on the other ſide. If a man be Tenant by the Curteſie, or Tenant in Dower of an Aduowſon, Rent or other thing that lye in grant, albeit there the eſtate begin without Deed, yet in reſpect of the nature and quality of the thing that lyes in grant, it cannot be ſurrendred without Deed. And ſo if a Leaſe for life be made of lands, the Remainder for life, albeit the remainder for life began without Deed, yet becauſe remainders and reuerſions though they be of lands are things that lye in grant, they cannot be ſurrendred without Deed. See in my Reports plentifull matter of ſurrenders.

19. *H.*6.33. 27. *Aſſ.*46. 14. *H.*7.4. 1. *H.*6.1. *Pl. Com.*341.

¶ *Quære ſi le fits la feme poet enter, &c.* Here Littleton maketh a quære. So as graue and learned men may doubt without any imputation to them, for the moſt learned doubteth moſt, and the more ignorant for the moſt part are the more bold and peremptorie.

It is holden of ſome, that after the ſurrender the iſſue in taile during the life of Tenant for life may enter, for that hauing regard to the iſſue the ſtate for life is drowned, and conſequently the inheritance gained by the Leaſe is by the acceptance of the ſurrender vaniſhed and

gone, as if Tenant in taile make a Lease for life, whereby he gaineth a new reuersion (as hath beene said) if Tenant for life surrender to the Tenant in taile, the estate for life being drowned, the reuersion gained by wrong is vanished and gone, and he is Tenant in taile against the opinion Obiter of Portington, 21.H.6.53.

21.H.6.53.

But herein are two diuersities worthy of obseruation. The first is that hauing regard to the partyes to the surrender, the estate is absolutely drowned, as in this case betweene the Lessee and the second baron. But hauing regard to strangers, who were not parties or privies thereunto, least by a voluntary surrender they may receiue prejudice touching any right or interest they had before the surrender, the estate surrendred hath in consideration of Law a continuance. As if a Reuersion be granted with warrantie and Tenant for life surrender, the Grantee shall not haue Execution in value against the Grantor who is a stranger during the life of Tenant for life, for this surrender shall worke no prejudice to the Grantee who is a stranger.

45.E.3.13. 5.H.5.9. 9.E.4.18.

So if Tenant for life, surrender to him in reuersion being within age, he shall not haue his age, for that should be a prejudice to a stranger, who is to become Demandant in a reall action.

40.E.3.13. 9.E.4.18. 1.H.6.1. 24.E.3.77.

If Tenant for life grant a Rent charge, and after surrender, yet the rent remaineth, for to that purpose he commeth in vnder the charge. Causa qua supra.

5.H.5.8. 26.Ass.38. 7.H.6.2. b.

If a Bishop be seised of a Rent-charge in fee, the Tenant of the land enfeoffe the Bishop and his Successors, the Lord enter for the Mortmaine, he shall hold it discharged of the rent, for the entrie for the Mortmaine affirmeth the alienation in Mortmaine, and the Lord claymeth vnder his estate, but if Tenant for life grant a rent in fee, and after infeoffe the Grantee, and the Lessor enter for the forfeiture, the rent is reuiued, for the Lessor doth claime aboue the Feoffment. But if I grant the reuersion of my Tenant for life to another for terme of his life, and Tenant for life attorne, now is the waste of Tenant for life dispunishable. Afterwards I release to the Grantee for life and his heires, or grant the reuersion to him and his heires, now albeit the Tenant for life be a stranger to it, yet because he attorned to the Grantee for life, the estate for life which the Grantee had, shall haue no continuance in the eye of the Law as to him, but he shall be punished for waste done afterward.

48.E.3.16.

The second diuersity is, that for the benefit of an estranger the estate for life is absolutely determined. As if he in the reuersion make a Lease for yeares or grant a Rent-charge, &c. and then the Lessee for life surrender, the Lease or rent shall commence maintenant. So in the case of Littleton, first betweene the Lessee, and the second husband, the state for life is determined, and secondly for the benefit of the issue it shall be so adiudged in Law. Here note a diuersity, when it is to the prejudice of a stranger, and when it is for his benefit.

If a man maketh a Lease to A. for life reseruing a rent of 40.shillings to him and his heires, the remainder to B. for life, the Lessor grant the reuersion in fee to B. A attorne, B. shall not haue the rent, for that although the fee simple doe drowne the remainder for life betweene them, yet as to a stranger it is in esse, and therefore B. shall not haue the rent, but his heire shall haue it.

Adiudge Mich.16.& 17. Eliz. inter Turner Pl. & Grayde in exchequer Rot.945. Sir Francis Flemmings case.

A Master of an Hospitall being a sole Corporation by the consent of his brethren make a Lease for yeares of part of the possessions of the Hospitall, afterwards the Lessee for yeares is made master, the terme is drowned, for a man cannot haue a terme for yeares in his owne right, and a freehold in auter droit to consist together (as if a man Lessee for yeares take a feme Lessor to wife.) (a) But a man may haue a freehold in his owne right and a terme in auter droit, and therefore if a man Lessor take the feme Lessee to wife, the terme is not drowned, but he is possessed of the terme in her right during the Coverture. (b) So if the Lessee make the Lessor his Executor, the terme is not drowned. Causa qua supra.

(a) 6.H.4.7. Pl.Com.428.

(b) 32.H.8.Br.surrender 52.

But if it had beene a Corporation aggregate of many, the making of the Lessee Master had not extinguished the terme, no more then if the Lessee had beene made one of the brethren of the Hospitall.

Sect. 637.

Vid.Sect.658.

CVN *foits*. Here it is to bee obserued that it is not necessary that the Tenant in taile bee euer seised of an estate taile at the time when the Discontinuance of the whole estate is begun, as if Tenant in taile make a lease for life, whereby he gaineth,

CNOta que vn estate taile ne poit este discontinue, mes la ou cestuy que fait le discontinuance fuit vn foits seisie per force de le taile, sinon que

NOte, that an estate taile cannot bee discontinued, but there where hee that makes the discontinuãce was once seised by force of the taile, vnles it be

que ſoit per reaſon de garrantie, &c. Come ſi ſoit aiel, pier, & fits, et layel ſoit tenant en taile, et eſt diſſeiſie per le pier que eſt ſon fits, et le pier fait vn feoffment ou ceo ſans garranty & deuie, et puis laiel deuie, le fits bien poit enter ſur le feoffee, pur ceo que ceo ne fuit pas diſcontinuance, entant que le pier ne fuit ſeiſie per force de le taile al temps del feoffmēt ge.mes fuit ſeiſie en fee per le diſſeiſin fait al ayel.

by reaſon of a warrāty, &c. As if therebe grād-father, father, & ſon, & the grandfather is tenant in taile, & is diſſeiſed by the father who is his ſon, & the father maketh a feoffment of this without warranty & die, & afterwards the grādfather dies, the ſon may wel enter vpō the feoffee, becauſe this was no diſcontinuāce, inaſmuch as the father was not ſeiſed by force of the entaile at the time of the feoffment, &c. but was ſeiſed in fee by the diſſeiſin of the grandfather.

as hath beene ſaid, a fee ſimple by wrong, in this caſe if he grant the Reuerſion in fee, and the Leſſee dieth, the whole eſtate is diſcontinued, and yet at the time of the grant (by which the Diſcontinuance continueth) he was not ſeiſed by force of the taile, and therefore Littleton materially added theſe words (Vn foits) that is, that he was once ſeiſed by force of the eſtate taile: and ſeeing that (as hath beene ſaid) a Diſcontinuance is a priuation, the rule of Law agreeth well with the rule of Philoſophie that Omnis priuatio præſupponit habitum, and therefore he cannot diſcontinue that eſtate which he neuer had.

Vid. Sect. 592. 596. 597. 601. 640. 658.

¶ *Sinon que il ſoit per reaſon del garrantie, &c.* For in many caſes a warranty added to a Conueyance is ſaid to make a diſcontinuance Ab effectu, although hee that made the conueyance was neuer ſeiſed by force of the eſtate taile, becauſe it taketh away the entrie of him that right hath, as a Diſcontinuance doth. As if Tenant in taile be diſſeiſed and dieth, and the iſſue in taile releaſe to the Diſſeiſor with warranty; in this caſe the iſſue was neuer ſeiſed by force of the taile, and yet this hath the effect of a Diſcontinuance by reaſon of the warranty, and the reaſon hereof appeareth before in this Chapter.

9. E. 4. 19. 12. E. 4. 11. 21. E. 4. 97.

¶ *Le fits poet enter.* But if the father that made the feoffment had ſuruiued the Grandfather he ſhould neuer haue entred againſt his owne feoffment, but albeit the Father had ſuruiued, yet after his deceaſe the Sonne ſhould haue entred for the reaſon here yelded by Littleton. But if the feoffment had beene with warranty, then it had wrought the effect of a Diſcontinuance, and therefore Littleton ſaith Sauns Garrantie, without warrantie.

15. E. 4. Diſcont. 30. & entr. Cong. 21. 21. E. 4. 97. 9. E. 4. 19. 39. H. 6. 45. 21. H. 6. 12. 12. E. 4. 11. 1. Mar. Dier 98.

Sect. 638.

¶ Item ſi Tenant en Taile fait vn leaſe a vn auter pur terme de vie, et le Tenant ē tail ad Iſſue et deuie, et le reuerſion diſcendiſt a ſon Iſſue, et puis iſſue granta le reuerſion a luy diſcendue a vn auter en fee, et le tenant a terme de vie attourna & deuie, et le Grantee del reuerſion enter, &c. et eſt ſeiſie en fee en la vie del Iſſue, et puis iſſue en le taile ad iſſue fits et deuie, il ſemble

ALſo if Tenant in Taile make a Leaſe to another for terme of life, and the Tenaunt in Tayle hath Iſſue and dieth, and the Reuerſion diſcendeth to his Iſſue, and after the Iſſue granteth the reuerſion to him diſcended, to another in Fee, and the Tenant for life attorne and die, and the Grantee of the Reuerſion enter, &c. and is ſeiſed in Fee in the life of the Iſſue, and after the Iſſue in Tayle hath

ble que ceo nest pas discontinuance a le fits, mes que le fitz poit enter, &c. pur ceo que son pier a que le reuersion de fee simple discendist, &c. nauoit vnques riens en la terre, per force de le Taile, &c.

Issue a son and dieth, it seemes that this is no discontinuance to the son, but that the son may enter, &c. for that his father, to whom the reuersion of the fee simple discēded, had neuer any thing in the land by force of the entaile, &c.

15.E.4.Discont.30.43.Ed.3.6.21.H.6.52.4.H.7.17.

OF this opinion is Littleton in our Bookes.

Le Grantee del reuersion enter, &c. Here it is to be vnderstood and obserued, That in this case of the grant of the Reuersion, Littleton doth not say, Sans garrantie, because if a warrantie had beene added, it had wrought no discontinuance, for that (as hath beene said) the Discontinuance in iudgement of Law was but for life: but when the addition of a warrantie doth worke a Discontinuance, then Littleton saith, Sans garrantie, as you may obserue often in this Chapter.

21.H.6.52.53.

Sect. 639.

CAr si home seisie en droyt sa feme, lessa mesme la Terre a vn auter pur terme de vie, ore est le reuersion de fee simple a le Baron, &c. Et si le Baron morust, viuant sa feme et le Tenant a terme de vie, et le reuersion discendist al heire le Baron, si le heire le Baron grant le reuersion a vn auter en fee, et le tenant atturna, &c. et puis le tenaunt a terme de vie morust, et le Grauntee del Reuersion en cel Case enter: En cest case ceo nest pas Discontinuance a le Feme, mes la feme bien poit enter sur le Grantee, &c. pur ceo que l'grantor nauoit riens al temps del Graunt, en le droit la Feme, quant il fist le graunt del Reuersion.

FOr if a man seised in the right of his Wife, letteth the same land to another for terme of life, now is the reuersion of the Fee Smple to the Husband, &c. And if the Husband dyeth, liuing his Wife, and the Tenant for life, and the Reuersion discend to the heire of the Husband, if the Heire of the Husband grant the reuersion to another in Fee, and the Tenant attorne, &c. and afterwards the Tenant for life dieth, and the Grantee of the reuersion in this case enter: In this case this is no discotinuance to the wife, but she may well enter vpon the Grantee, &c. because the grantor had nothing at the time of the Graunt, in the right of his Wife when hee made the Graunt of the Reuersion.

14.E.3.Discont.5.18.ass.p.2 18.E.3.54. 38.E.3.32. 22.H.6.24. 21.H.6.52.53. 15.E.4.Discont.30.

CAr si home seisie en droit sa feme, lessa, &c. Here Littleton, putteth his case where the Baron onely makes a Lease for life, for if he and his wife ioyne in a Lease by Deed, there the Reuersion is not discontinued. See before, Sect.620. More need not to be sayd hereof, in respect the like case of Tenant in Taile hath beene explained before.

Sect.

Section 640.641.

CEt iſſint il ſemble, coment que homes queux ſont inheritables per force de le Taile, et ils ne fueront vnques ſeiſies per force de meſme le Taile, que tiel feoffements ou grants p eux fait ſans clauſe de Garrantie, nẽ pas diſcontinuance a lour iſſues apres lour deceaſe, mes q̃ lour Iſſues poyent bien enter, &c. coment que ceux queux fierent tielz grants en lour vies fueront forbarres dentrer per lour Fait demeſne, &c.

AND ſo it ſeemeth, That men which are inheritable by force of an Entaile, and neuer were ſeiſed by force of the ſame entaile, that ſuch Feoffements or grants by them made without clauſe of warrantie, is no diſcontinuance to their Iſſues after their deceaſe, but that their Iſſues may well enter, &c. albeit they which made ſuch Graunts in their liues were forebarred to enter by their owne act, &c.

Sect. 641.

CEt ſi le tenant en Taile ad iſſue deux fits, et leigne diſſeiſt ſon pier, et ent fait feoffement en fee ſans clauſe de Garrantie, et deuia ſans Iſſue, et puis le pier deuie, le puiſn̄ fits poit bien enter ſur le feoffee, pur ceo que l' Feoffment ſon eigne Frere ne poit eſtre diſcontinuance, pur ceo que il ne fuit vnques ſeiſie p force de meſme le Taile. Car il ſemble encounter reaſon, que per matter en fait, &c. ſans clauſe de Garrantie, home poit diſcontinuer vn Fait, &c. que ne fuit vnques ſeiſie per force de meſme le Taile.

AND if Tenant in Taile hath Iſſue two Sonnes, and the eldeſt diſſeiſeth his Father, & thereof maketh a Feoffement in Fee, without clauſe of Warrantie, and die without iſſue, and after the father die, the yongeſt ſon may well enter vpon the Feoffee, for that the Feoffement of his elder brother cannot be a diſcontinuáce, becauſe he was neuer ſeiſed by force of the ſame Tayle. For it ſeemeth to be againſt reaſon, that by matter in fact, &c. without clauſe of Warrantie, a man ſhould diſcontinue a Deed, &c. that was neuer ſeiſed by force of the ſame Taile.

CNOte, here alſo in theſe two Sections appeareth, That (as hath beene ſayd before) a Warrantie, though he were neuer ſeiſed, by force of the Tayle may worke the effect of a Diſcontinuance. *Vid. Sect. 592. 596. 597. 601. 651.*

C *Home poet diſcontinuer vn fait, &c.* This is miſtaken, & ſhould be, Home poet diſcontinuer vn taile, and ſo is the Originall.

Sect.

Sect. 642.

¶ Nota ſi ſoit Sñr, et tenãt, et le tenant dona les tenements a vn auter en taile, le remainder a vn auter en fee, et puis le tenant en taile fait vn leas a vn home pur terme de vie, &c. ſauant le reuerſion, &c. & puis granta le reuerſion a vn auter en fee, et le tenant a terme de vie atturna, &c. et puis le grantee del reuerſion mozuſt ſans heire, oze meſme l' reuerſion deuient al ſeignioz per voy deſcheate. Si en ceſt cas, le tenant a terme de vie deuiaſt, et le Seignioz per foꝛce de ſon eſcheate enter en la vie le tenant en le taile, et puis le tenant en le taile mozuſt, il ſemble en ceo cas que ceo neſt pas diſcontinuance al iſſue en le taile ne a celuy en le remainder, mes que il poit bien enter pur ceo que le Seignioz eſt eins per voy deſcheat, et nemy per le tenant en le taile, &c. Mes ſecus eſſet, ſi le reuerſion vſt eſte execute en le grauntee en le vie le tenant en le tayle, car adonque vſt le grauntee eſte eins en les tenements per le tenant en le tayle, &c.

NOte if there be Lord and Tenant and the Tenant giueth lands to another in taile, the remainder to another in fee, and after the Tenant in taile makes a leaſe to a man for a terme of life, &c. ſauing the reuerſion, &c. and after granteth the reuerſion to another in fee and the tenant for life attorne, &c. and after the Grantee of the reuerſion die without heire, now the ſame reuerſion commeth to the Lord by way of eſcheate. If in this caſe the Tenant for life dieth and the Lord by force of his eſcheat enter in the life of Tenant in taile, and after the Tenant in taile dieth, it ſeemeth in this caſe that this is no diſcontinuance to the iſſue in taile, nor to him in the remaynder, but that he may well enter, becauſe the Lord is in by way of eſcheate, and not by the Tenant in tayle, but otherwiſe it ſhould bee, if the reuerſion had beene executed in the Grantee, in the life of Tenant in tayle, for then had the Grantee beene in the Tenements by the Tenant in taile, &c.

Vide Sect.620.

¶ The reaſon of this caſe is here rendzed (as befoze it was in this Chapter) that albeit the reuerſion be executed in the Lozd by eſcheate in the life of Tenant in tayle, yet becauſe he is not in by the Tenant in tayle but by eſcheate, it wozketh no Diſcontinuance. But if it had beene executed in the life of Tenant in tayle in the Grantee which was in by Tenant in tayle, then the Lozd by eſcheate ſhould haue taken aduantage of it, but of this ſufficient hath beene ſaid befoze in this Chapter.

Lib.1. fol.136. Lib.3. fol.62.63.

Sect. 643.644. & 645.

¶ P*Arcel de ſon Glebe &c.* In whom the ſeeſimple of the glebe is,

¶ Item ſi vn parſon dun Eſgliſe, ou vn Vicar dun Eſgliſe

ALſo if a Parſon of a Church or a Vicar of a Church alien

Esglise, alien certaine terres, ou tenements parcel de son glebe, &c. a vn auter en fee, et mozust, ou resigne, &c. son successor poit bien ent, nient contristeãt tiel alienation, come est dit en vn Nota 2. H.4 Terme Mich. quod sic incipit.

certaine Lands or Tenements parcell of his Glebe, &c. to another in fee, and die or resigne, &c. his successor may well enter notwithstanding such alienation, as is said in a *Nota* 2.*H*.4. *Termino Mich.* which beginneth thus.

Sect. 644.

CNOta quod dictum fuit pro lege en vn briefe de accompt portr per vn master dun colledge, vers vn Chapleine, que si vn Parson. ou vn Vicar, graunt certaine terre, quel est de droit son Esglise a vn auter & deuie, ou permute, le successor poit enter, &c. Et ieo croy que la cause est, pur ceo que le Parson, ou Vicar, que est seisie, &c. come en droit de son Esglise, nad pas droit de fee simple en les tenements, et le droit de fee simple de ceo demurt en ascun auter person, et pur cel cause son success. poit bien enter, nient contristeant tiel alienation, &c.

Nota quod dictum fuit pro lege, in a Writ of Account brought by a Master of a Colledge against a Chaplaine, that if a Parson or Vicar grant certaine Land, which is of the right of his Church to another and die, or changeth, the Successor may enter, &c. And I take the cause to bee, for that the Parson or Vicar that is seised, &c. as in right of his Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth in another person. And for this cause his Successour may well enter, notwithstanding such alienation, &c.

is a question in our Bookes: (a) some hold that it is in the Patron, but that cannot bee for two reasons, first, for that in the beginning the Land was given to the Parson and his Successors, and the Patron is no Successor. Secondly, the words of the writ of Iuris vtrum bee, si sit libera Eleemosina Ecclesiæ de D. and not of the Patron. Some others doe hold that the fee simple is in the patron & Ordinary, but this cannot bee for the causes aboue said And therefore of necessitie the fee simple is in abeyance as Littleton saith. And this was prouided by the Prouidence and wisdome of the Law, for that the Parson & Vicar haue Curam animarum, and were bound to celebrate Diuine Seruice, and administer the Sacraments, & therefore no Act of the Predecessor should make a discontinuãce to take away ẏ entry of the successor, and to driue him to a reall action whereby he should be destitute of maintenance in the mean time; vpon consideration of all our Bookes I obserue this diuersitie, that a Parson or Vicar for the benefit of the Church and of his Successor is in some cases esteemed in Law to haue a fee simple qualified but to doe any thing to the prejudice of his Successor in many cases, the Law adiudgeth him to haue in effect but an estate for life, Causæ Ecclesiæ publicis causis æquiparantur, and summa ratio est quæ pro religione facit. And Ecclesia fungitur vice minoris meliorem facere potest conditionem suam deteriorem aequaquam.

(a) 8.H.6.24. 12.H.8.7.

*Vide Regist.*307.a. 45.E 3.tit. Estrange. 12.H.8.9.

F.N.B.45.L.

*Bracton lib.*4.*fol.*226.

*Britt. fol.*143.

As a Parson, Vicar, Archdeacon, Prebend, Chantery Priest, and the like may haue an Action of waste, and in the writ it shall be said ad exhæredationem Ecclesiæ, &c. ipsius B. or Præbendæ ipsius A.

F.N.B.55.D.& 57.E.F. 10.H.7.5.

And the Parson, &c. that maketh a Lease for life shall haue

F.N.B.49.l.m.n.10.E.3. tit.Iura vtrum. Temps E.3. Iura vtrum 14.1.14.E.3. ibid.4. F N B 50. 30.E.3. 26 21.E.3.11.tit.Entrie 10 F N B.206. F. Registr.237. 4.E.4 2. 8.E.3.tit.Entrie 3. 7.E.3.54.55.

haus à Consimili casu during the life of the Lessee, and a writ of entry ad communem legem after his death, or a writ Ad terminum qui præterijt, or a quod permittat in the debet, and none can maintaine any of these writs, but a Tenant in fee simple or fee tayle.

And a Parson, &c. may receiue homage, which Tenant for life cannot doe, Temps E.1. Incumbent 19.

(e)F.N.B.49.L.50.4.

(c) Likewise a Parson, &c. shall haue a writ of meine and a Contra formam feoffamenti.

But a Parson cannot make a discontinuance as Littleton here teacheth, for that should bee to the preiudice of his Successor, to take away his entrie, and to driue him to a reall action.

20.E.3.tit.Aide 30.25.E.3. 54.8.E.3.45.8.H.6.24. 11.H.6.9.6.E.3.45.43.Ass. Pl.13.F.N.B.129.

Also if a Parson, &c. make a lease for yeares reseruing a rent & dieth, the lease is determined by his death, as if Tenant for life had made a lease, no acceptance of the rent by the Successor can make it good. Also in a reall action a Parson, Vicar, Archdeacon, Prebend, &c. shall haue aide of the Patron and Ordinary as tenant for life shal haue. So as it is euident that to many purposes a Parson hath but in effect an estate for life, and to many a qualified fee simple, but the entire fee and right is not in him, and that is the reason that hee cannot discontinue the fee simple that he hath not, nor euer had, for as it hath beene said, Omnis priuatio præsupponit habitum. And for the same cause he cannot haue a writ of right right, nor a writ of right in his nature, as a writ of Right Sur disclaimer of customes and seruices, Ne iniuste vexes, rationabilibus diuisis, quo iure, and the like.

Sect. 645.

CAr vn Euesq̃ poit auer bꝛe de droit de tenemẽts de droit de son Esglise, pur ceo que le droit est en son Chapiter, et le fee simple demurrant en luy et en s̃ Chapiter. Et vn Deane poit auer bꝛe de droit, pur ceo que le droit demurt ẽ luy. Et vn Abbe poit auer briefe de droit, p̃ ceo que le droit demurt en luy, et en son couent. Et vn Master dun Hospitall poit auer briefe de droit, pur ceo que le droit demurt en luy, et en ses confreres, &c. Et sic de alijs casibus consimilibus. **Mes vn parson ou vn Vicar ne poit auer briefe de droit, &c.**

For a Bishop may haue a writ of right of the tenemẽts of the right of his Church, for that the right is in his Chapiter, and the fee simple abideth in him and in his Chapiter. And a Deane may haue a writ of right, because the right remaynes in him. And an Abbot may haue a writ of right for that the right remaynes in him and in his Couent. And a Master of an Hospitall may haue a Writ of Right because the right remayneth in him and in his Confreres, &c. And so of other like cases. But a Parson or Vicar cannot haue a Writ of Right, &c.

But here it appeareth by Littleton that such bodies politique or corporate as haue a sole seisin, and may haue a writ of right for that the fee and right is in them (albeit they cannot absolutely conuey away their Lands, &c. without assent of others) may make a Discontinuance, as a Bishop, an Abbot, a Deane, a Master of an Hospitall and the like. But this is to bee vnderstood, where a Deane or a Master of an Hospitall, &c. are soly seised of distinct possessions, for if the bodie that is seised be aggregate of many, as the Deane and Chapiter, Master and Confreres, &c. then the feoffment of the Deane or Master is so farre from a Discontinuance as it is a disseisin.

44.E.3.11.11.H.4.68. 9.E.4.16.18.E.3.7. 6.E.3. 11.5.E.2.Aide 167. 12.H. 4.11.32.E.3.Aide 39. 38.E.3.19.14.E.3.Iuris vtrum 4.

And these that haue the fee and right in them shall not haue aide in respect of their high and large estate, albeit any of them be presentable: but a Deane that is collatiue shall haue aide of the King.

And it is to be obserued, that the remedy is euer agreeable to the right, and therefore the Bishop, Deane, Master of an Hospitall, that hath Colledge and common Seale, or the like, shall haue a writ of Right Right, which is the highest remedie, for that they haue the highest estate.

Hert

Here Littleton citeth the Booke Caſe, Mich.2 H.4. as an authoritie wherevpon he groundeth his opinion. And it is to be obſerued, that the yeares of H.4. were publiſhed before Littleton did write.

But at this day, the Biſhop, Deane, Maſter of an Hoſpitall, or the like that haue the fee and right in them, as hath beene ſaid, cannot diſcontinue, neyther can they or any Parſon, Vicar, Archdeacon, Prebend, or any other hauing any Eccleſiaſticall Liuing with aſſent of Deane and Chapiter, Patron and Ordinary, or the conſent of any others make any Leaſe, Gift, Grant or Conueyance, Eſtate, Charge or Incumberance to bind his Succeſſor other then for tearme of one and twentie yeares, or three liues in poſſeſſion, whereupon the accuſtomed Rent or more ſhall be reſerued. Theſe be excellent Lawes, and haue beene well expounded for the maintenance of Religion; and the good of Gods Church, for otherwiſe it is to be feared that holy Church would loſe more then it would gaine in theſe dayes.

Vide Sect. 527. 593. &c. 1. *Eliz.* ca. 18. 13. *Eliz.* ca. 10 1. *Iacobi* cap. 3.

But where Littleton in this and other Sections make mention of Maſters of Hoſpitals, the Reader muſt know, that ſince Littleton wrote, there hath beene a great alteration made by diuers Acts of Parliament concerning Hoſpitals.

Lib.2 fol.46. Lib.4 fol.76. & 20. Lib.5. fol.9. & .14. Lib.6. fol.37. Lib.7. fol 8. Lib.11. fol.67. 37.H.8. 31 H.8. 32 H.8. 37.H.8. 1.E.6. &c.

¶ *Maſter del Hoſpitall.* Theſe points concerning Hoſpitals were reſolued (e) by the Juſtices.

(e) *Paſch.24.Eliz.* The Lord Cheneys caſe. *Lib.2. fol.48.49.* Archbiſhop of Canterburies caſe.

Firſt, That no Hoſpitall was giuen to the Crowne by the Statute of 27.H.8. nor any Hoſpitall is within the Statute of 31.H.8. of Monaſteries, but only religious and Eccleſiaſticall Hoſpitals, and that no Lay Hoſpitall was within thoſe Statutes.

Secondly, If vpon the foundation of any lay Hoſpital or after it was ordained, That one or diuers Prieſts ſhould be maintained within the Hoſpitall to celebrate Diuine Seruice to the poore, and to pray for the ſoule of the Founder, and all Chriſtian ſoules, or the like, and that the poore of ſuch Hoſpitall ſhould make the like Oriſons, yet ſuch an Hoſpitall is not within the ſaid Statutes, for the Hoſpitall is Lay, and not Religious, and all or the moſt part of ancient Lay Hoſpitalls were founded or ordained after the like ſort, and the makers of thoſe Statutes neuer intended to ouerthrow workes of Charitie, but to take away the abuſe.

Thirdly, That no Hoſpitall was giuen to the King by the Statute of 37.H.8. but in two caſes, where the Donors, Founders or Patrons, &c. had entred and expulſed the Prieſts, wardens, &c. betweene the fourth day of February, Anno 27.H.8. and the fine and twentieth of December, Anno 37.H.8. or where King Henrie the eighth by Commiſſion according to that Act ſhould enter and ſeiſe the ſame, but that determined by the death of that King.

Lib.1. fol.24. Portus caſe.

Fourthly, That the Statute of 1.E.6. extended not to any Hoſpitall whatſoeuer eyther Lay or Religious, as by the ſame appeareth.

Portus caſe vbi ſupra. Lib.4. 111.113.114.116. In Lamberts caſe.

And I was of Counſell with the Lord Cheney in this caſe, which, ſeeing it may doe good for maynteuance of Charitable vſes, I thought good ſummarily to report it, to this I will adde Panis pauperum vita pauperum, qui defraudat eos vir ſanguinis eſt.

Eccleſiaſticus ca.34. verſ.22.

Nota, of Hoſpitals ſome are Corporations aggregate of many, as of Maſter or warden, &c. and his Confreres: ſome where the Maſter or warden hath only the eſtate of Inheritance in him, and the Brethren or Siſters power to conſent hauing Colledge and Common Seale, ſome where the Maſter or warden hath the ſtate in him, but hath no Colledge and common Seale, and ſuch a Maſter or warden ſhall haue a Iuris vtrum: and of theſe Hoſpitals ſome be eligible, ſome donatiue, and ſome preſentable.

14.E.3. Iuris Vtrum.4.

Sect. 646.

¶ Mes le pluis haut briefe q̄ ils poient auer eſt le brief de Iuris vtrum, le quel eſt graund proofe que le droit de fee neſt en eux ne en nul auters, &c. Mes le droit de fee ſimple eſt en abeiance ſc. ceo eſt adire, que il eſt tantſolement en le remembrance, entendement, & conſideration de la ley, &c. Car moy ſemble que tiel choſe

BVt the higheſt Writ that they can haue is the Writ of *Iuris vtrum*, which is a great proofe that the right of fee is not in them, nor in any others, &c. but the right of the fee ſimple is in abeiance, that is to ſay, that it is only in the remembrance, intendement and conſideration of

choſe et tiel droit que eſt dit en diuers Lieurs eſtre en abeyance, eſt a tant adire en Latyne, (ſ.) Talis res, vel tale rect' quæ vel qd non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia Legis, & quod alij dixerunt, talem rem aut tale rectum fore in nubib'. **Mes ieo ſuppoſe que ils intenderont per ceux parols**, In nubibus, &c. **come ieo aye dit deuant.**

the Law, &c. for it ſeemeth to me, That ſuch a thing, and ſuch a Right which is ſayd in diuers bookes to be in abeyance, is as much to ſay in Latine, (ſ.) *Talis res, vel tale Rectum qua vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia legis, & quod alij dixerunt, talem rem aut tale rectum fore in nubibus.* But I ſuppoſe, that they meane by theſe words, (*In nubibus, &c.*) as I haue ſaid before.

1 E.3.63. Vi. Sect.648.649 650.651.

CEN *abeiance.* **That is in in expectatiõ, of the Frẽch word** Bayer to expect. **For when a Parſon dyeth we ſay that the freehold is in Abeiance, becauſe a Succeſſor is in expectation to take it, and here note the neceſſitie of the true interpretation of words.**

Ibid. Sect.1.

If Tenant Pur terme dauter vie **dyeth, the freehold is ſaid to be in Abeiance vntill the occupant entreth. If a man make a Leaſe for life the remainder to the right heires of I.S. the fee ſimple is in Abeiance vntill I.S. dieth. And ſo in the caſe of the Parſon, the fee and right is in Abeiance, that is in expectation, in remembrance, entendment or conſideration of Lawe** 1. In conſideratione ſiue intelligentia legis, **becauſe it is not in any man then liuing, and the right that is in Abeiance is ſaid to be** In nubibus **in the Clouds, and therein hath a qualitie of fame whereof the Poet ſpeaketh;**

Virg. 4. Aneid.

Inſequiturque ſolo, & caput inter nubila condit.

Section 647.

CITẽ ſi vn parſon dun eſgliſe deuie, ore le franktenement del glebe del perſonage eſt en nulluy durant le temps que le parſonage eſt voide, mes in abeiance, ceſt aſcauoir, in conſideration & en le intelligenc̃ de le ley, tanque vn auter ſoit fait parſon de meſme legliſe, et immediat quant vn auter eſt fait parſon, le franktenement en fait eſt en luy come ſucceſſor.

ALſo if a Parſon of a Church dieth, now the freehold of the glebe of the Parſonage is in none during the time that the Parſonage is voide but in abeiance, *viz.* in conſideration and in the vnderſtanding of the Law vntill another be made Parſon of the ſame Church, and immediatly when another is made Parſon, the freehold in Deed is in him as Succeſſor.

Brack. li.1.ca.2. Brit. fo.249.

CSI *vn Parſon dun Eſgliſe deuie, &c.* **Soit is of a Biſhop, Abbot,** Deane, Archdeacon, Prebend, Vicar, **and of euery other ſole Corporation or body politique preſentatiue, electiue, or donatiue, which inheritances put in abeiance are by ſome called** Hæreditates jacentes, **and ſome ſay,** Que le fee eſt en balaunce,

Sect.

Sect. 648.

¶ Item aſcuns peradventure voilēt arguer & dire, que entant que vn parſon ove laſſent del patron & ordinarie poit grāter vn rent charge hors del glebe del parſonage en fee, et iſſint charger l' glebe del parſonage perpetualmēt ergo ils ont fee ſimple, ou deux, ou vn de eux, auoit fee ſimple al meins. A ceo poit eſtre reſpondue, que il eſt prīciple en le ley, que de cheſcuns terres il y ad fee ſimple, &c. en aſcun hom̄, ou anterment le fee ſimple eſt en abeyance. Et vn auter prīciple eſt, Que cheſcun terre de fee ſimple poit eſtre charge de vn Rent-charge en fee per vn voy, ou per auter. Et quant tiel rent eſt graunt per le Fait le Parſon, et l' Patron, et Ordinarie, &c. en fee, nul auera preiudice ou parde p force de tiel Grant, forſque les Grantors en lour vies, et les Heires le Patron, et les ſucceſſors del Ordinary apres lour deceaſe. Et apres tiel charge, ſi le

ALſo ſome peraduenture will argu and ſay, that inaſmuch as a Parſon with the aſſent of the Patron and Ordinary, may grant a rent charge out of the Glebe of the Parſonage in fee, and ſo charge the glebe of the Parſonage perpetually, *ergo* they haue a Fee ſimple, or two or one of them haue a fee ſimple at the leaſt. To this may bee anſwered, That it is a Principle in Law, That of euerie land there is a Fee ſimple, &c. in ſome bodie, or otherwiſe the fee ſimple is in abeyance. And there is another Principle, that euery Land of Fee ſimple may bee charged with a Rent charge in Fee by one way or other. And when ſuch Rent is granted by the Deede of the Parſon, and the patron, and Ordinarie, &c. in Fee, none ſhall haue preiudice or loſſe by force of ſuch Grant, but the Grantors in their liues, and the Heires of the Patron, and the ſucceſſours of the Ordinarie after their deceaſe. And after ſuch charge

¶ *Lest vn Principle en la Ley, &c.* Principium, quod eſt quaſi primum caput, from which many caſes haue their originall or beginning, which is ſo ſtrong, as it ſuffereth no contradiction; and therefore it is ſayd in our Bookes, that antient Principles of the law (a) ought not to be diſputed, Contra negantem principia non eſt diſputandum. That which our Author here calleth a Principle, Sect. 3. & 90. hee calleth a Maxime. (a) 11.H.4.9. Sect.3.& 90.

Here Littleton in anſwer to an obiection alledgeth two Principles. Firſt,

¶ *Que de cheſcun terre il y ad Fee ſimple, &c.* This is Perſpicue verum, and needeth no explanation. Secondly,

¶ *Cheſcun terre de Fee ſimple poet eſtre charge en Fee per vn voy ou auter.* Hereby it appeareth, That albeit the right of the Fee ſimple be in abeyance, yet it may be charged by one way or another. And ſo it may bee alienes in Fee, albeit the right of the fee be in abeyance, or in conſideration of Law. And herein is a diuerſitie worthie the obſeruation to be made, That when the right of Fee ſimple is perpetually by iudgement of Law in abeyance, without any expectation to come in eſſe, there hee that hath the qualified fee concurrentibus his quæ in iure requiruntur, may charge or alien it, as in the caſe of Parſon, Vicar, Prebend, &c. But where the Fee ſimple is in abeyance, and by poſſibilitie may euerie houre come in eſſe, there the fee ſimple cannot bee charged vntill it commeth in eſſe. As if a Leaſe for life be made, the remainder to the right heires of I.S. the Fee ſimple cannot be charged

charged till I.S. be dead. And so is Littleton to bee vnderstood, viz. that either it may be charged in præsenti or in futuro.

¶ *Chescun Terre de Fee simple.* And so it is of Lands entailed, for they may bee charged in Fee also, for the Estate Taile may bee cut off by Fine or Recouery. Also the Estate taile may continue, and yet Tenant in taile may lawfully charge the land and bind the Issue in Taile. As if a Disseisor make a gift in Taile, and the Donee in consideration of a Release by the Disseisee of all his right to the Donee, granteth a rent charge to the Disseisee and his heires, proportionable to the value of his right, this shall bind the Issue in Taile: Vide Sect. 1. Bridgewaters Case: which Lands by the rule of Littleton may be charged: and therefore if the owner of those thirteene acres grant a Rent charge out of those thirteene Acres generally, lying in the Meadow of eightie, without mentioning where they lie particularly, there as the state in the land remoues, the charge shall remoue also. But since our Author wrote, all Ecclesiasticall persons are disabled to charge in Fee any of their Ecclesiasticall possessions, as before hath beene spoken of at large.

Vi. Roll. 1. Bridgewaters case. & 59.

Vi. Roll. 593.

¶ *Et quant tiel rent est grant, &c.* This is an excellent interpretation and limitation of the sayd Principle, viz. That none shall haue preiudice or losse by any such Grant, but such as are partie or priuie thereunto, as the Patron and his Heyres, the Ordinarie and his Successors, and the Parson and his Successors: which Successors of the Parson are to be presented by the Patron or his heires, and admitted and instituted by the Ordinarie or his Successors. The like is to be sayd of an Archdeacon, Prebend, Vicar, Chauntris Priest, and the like.

31. E. 1. tit. Grant 90. 8. E. 2. Annuit. 53.

¶ *Per le Fait le Parson, & Patron, & Lordinarie, &c.* Yet if the Parson die, and in time of vacation, the Patron of the assent of the Ordinarie, or the Patron and Ordinarie grant an annuitie or Rent charge out of the Glebe, this shall (as hath beene sayd) binde the succeeding Parsons for euer.

16. E. 3. tit. Annuit. 24. 40. E. 3. 30. 3. E. 3. 17. Reg. 38

If there be Parson, Patron, and Ordinarie, and the Parson by the Ordinance and assent of

Parson deuie, ſ̃ ſucceſſour ne poit vener a le dit Eſglise d̃ estre Parson de meſme le Eſglise per la Ley, forſque per preſentment del Patron, et admission et institution del Ordinarie. Et pur cel cause il couient que le Succeſſor ſoy teigne content, et agree de ceo, que ſon Patron et Lordinary loyalmẽt eſoyent adeuant, &c. Mes ceo neſt proofe que le Fee ſimple, &c. eſt en le Patron et Lordinarie, ou en aſcun de eux, &c. Mez la cauſe que tiel grãt de Rent charge eſt bone, eſt pur ceo que ceux queux aueront intereſt, &c. en la dit Eſglise, ſ̃, le Patron ſolonque la Ley temporal, et Lordinarie ſolonque la Ley ſpirituall, fueront aſſentus, ou parties a tiel charg̃, &c. Et ceo ſemble eſtre la verie cauſe que tiel Glebe poit eſtre charge en perpetuitie, &c.

if the Parson die, his succeſſor cannot come to the ſayd Church to be Parson of the ſame, by the Law, but by the preſentment of the Patron, and admiſſion and inſtitution of the Ordinarie. And for this cauſe the Succeſſour ought to hold himſelfe content, and agree to that which his Patron and the Ordinarie haue lawfully done before, &c. But this is no proofe that the Fee ſimple, &c. is in the Patron and the Ordinarie, or in either of them, &c. but the cauſe that ſuch graunt of rent charge is good, is for that they who haue the intereſt, &c. in the ſayde Church, *viz.* the Patron according to the Law Temporall, and the Ordinarie, according to the law ſpiritual, were aſſenting, or parties to ſuch charge, &c. And this ſeemeth to be the true cauſe why ſuch Glebe may be charged in perpetuitie, &c.

of the Ordinarie grant an Annuitie to another, having quid pro quo in consideration thereof, this shall bind the successor of the Parson, without the consent of the Patron.

6 E.3.445. 7 E.3.40.41. F.N.B.152.17.E.3.32. 39.E.3 17.b. 11.H.4.68. 8 H.3.23.

A Church Parochiall may be donative and exempt from all ordinaris iurisdiction, and the Incumbent may resigne to the Patron, and not to the Ordinarie, neither can the Ordinarie visit, but the Patron by Commissioners to be appoynted by him: And by Littl. rule, the Patron and Incumbent may charge the Glebe, and albeit it be donative by a Lay man, yet mere laicus is not capable of it, but an able Clerke infra sacros Ordines is, for albeit he come in by Lay donation, and not by admission or institution; yet his Function is spirituall, and if such a Clerke donative be disturbed, the Patron shall haue a Quare impedit of this Church donative, and the writ shall say, Quod permittat ipsum præsentare ad Ecclesiam, &c. and declare the speciall matter in his Declaration. And so it is of a Prebend, Chanterie, Chappell donative, and the like, and no Laps shall incurre to the Ordinarie, except it be so specially prouided in the Foundation. But if the Patron of such a Church, Chanterie, Chappell, &c. donative, doth once present to the Ordinarie, and his Clerke is admitted and instituted, it is now become presentable, and neuer shall be donative after, and then Laps shall incurre to the Ordinary, as it shall of other Benefices presentable. But a presentation to such a Donative by a stranger, and admission and institution thereupon, is meerely voyd. And all this was resolued by the whole Court of Kings Bench, for the Rectorie Parochiall donative of Saint Burian in the Countie of Cornewall.

14 H.3. Quar. imp 183. 17.E.3.12.64. 14.H.4.11. F.N.B.33.c.16. E.3.tit.660

13.E.4 3.6.H.7 14.

Vi.Sect 530. 22.H 6.26. F.N.B.35.c.

Hil.1.Iac.enam Rot.601 inter Wil Bancheld.Pl. & Wil.Gayer def.in Treſpas.

It appeareth by our Bookes, and by diuers Acts of Parliament, That at the first all the Bishoprickes in England were of the Kings foundation, and donative per traditionem baculi, (id est) the Crosier, which was the Pastorall Staffe, & annuli, the Ring whereby hee was married to the Church. And King Henrie the first beeing requested by the Bishop of Rome to make them elective, refused it: but King Iohn by his Charter bearing date quinto Iunij, anno decimo septimo, granted that the Bishoprickes should be eligible. If the King doth found a Church, Hospitall, or free Chappell donative, he may exempt the same from ordinarie Iurisdiction, and then his Chancellor shall visit the same. May, if the King doe found the same without any speciall exemption, the Ordinarie is not, but the Kings Chancellor, to visit the same. Now as the King may create Donatiues exempt from the visitation of the Ordinarie, so he may by his Charter licence any subiect to found such a Church or Chappell, and to ordaine that it shall be donative, and not presentable, and to be visited by the Founder, and not by the Ordinarie. And thus began Donatiues in England, whereof common Persons were Patrons.

17.E.3.40 6.E.3.10. 25.E.3.ca.v ide Fremsor. Math. Par pa.10 & 62.

F.N.B.35.E.42.A.B. 27 E.3.84 & 85. 8 Ass.29. 8.E.3. Ass 150. 18.E Scire Fac.11. 6.H 7.14. 16.E.3. Breife 660 31.E.3.60. Register.40. Dyer 10.Eliz.f. 273 14.El.ca.5.2.H.5.c.1.

¶ *Ordinarie.* Ordinarius is he that hath ordinarie iurisdiction in causes Ecclesiasticall, immediate to the King and his Courts of Common Law, for the better execution of Iustice, as the Bishop or any other that hath exempt and immediate iurisdiction in Causes Ecclesiasticall.

¶ *Ley temporel.* which consisteth of three parts, viz. First, On the Common Law, expressed in our Bookes of Law and iudiciall Records. Secondly, On Statutes contained in Acts and Records of Parliament. And thirdly, On Customes grounded vpon reason, and vsed time out of mind, and the Construction and determination of these doe belong to the Iudges of the Realme.

The Statutes 25.H.8.ca.19. 33.H.6.34. 32.H.6.28.

¶ *Ley Spiritual, &c.* That is, the Ecclesiasticall Lawes allowed by the Lawes of this Realme, viz which are not against the Common Law (whereof the Kings Prerogatiue is a principall part) nor against the Statutes and Customes of the Realme, and regularly according to such Ecclesiasticall Lawes, the Ordinarie and other Ecclesiasticall Iudges doe proceed in causes within their Conusance. And this Iurisdiction was so bounded by the antient Common Lawes of the Realme, and so declared by Act of Parliament.

¶ *Admission & Institution.* In propriete of speech, Admission is, when the Bishop vpon examination admitteth him to be able, and saith, Admitto te habilem. (d) Institution is, when the Bishop saith, Instituo te rectorem talis Ecclesiæ cum cura animarum, & accipe Curam tuam & meam. (e) But sometime in a more large sence, admissus doth include Institutus also, Cuius præsentatus sit admissus, (i.) institutus. And it is to bee obserued, That Institution is a good plenartie against a common person, (but not against the King, vnlesse he be inducted) and that is the cause that regularly plenartie shall be tried by the Bishop, because the Church is full by Institution, which is a spirituall Act, but voyd or not voyd shall be tried by the Common Law.

(d) Lib.4.fo 75. & 79. Lib.6.fo.49. Lib.7 fo 46. (e) W.2.cap.5.13.E.1.

22.H.6.27. 38.E.3.4.

Glanvill lib.13.ca.18.19.20. Mirror cap.5.§.3. Bracton Lib.4.fol.238.240. 244.&c.291. Flet.li.5.c.11. 16.17. Brit fo.222,223.229

At the Common Law if an estranger had presented his Clerke, and hee had beene admitted and instituted to a Church, whereof any Subiect had beene lawfull Patron, the Patron had no other remedie to recouer his Aduowson, but a writ of Right of Aduowson, wherein

6.E 3.28.39 52. 50.E.3.24 43.E.3.35.45.E.3. Quare imp.139.10.E.2.Com 22. 31.E.1.Quar.imp.186.

in the Incumbent was not to be removed: and so it was at the Common Law, if an vsurpation had been had vpon an Enfant or Feme Couert, having an Aduowson by discent, or vpon Tenant for life, &c. the Infant, Feme Couert, and he in the reuersion were driuen to their writ of Right of Aduowson; for at the Common Law, if the Church were once full, the Incumbent could not be removed, and Plenartie generally was a good Plea in a Quare impedit, or Assise of Darreine presentment, and the reason of this was, to the intent that the Incumbent might quietly intend & applie himselfe to his spiritual Charge. And secondly, the Law intended, that the Bishop that had cure of soules within his Diocesse, would admit and institute an able man for the discharge of his dutie and his owne, and that the Bishop would doe right to euerie Patron within his Diocesse. But at the Common Law, if any had vsurped vpon the King, and his Presentee had been admitted, instituted, and inducted, (for without induction the Church had not been full against the King) the King might haue removed him by Quare impedit, and been restored to his presentation, for therein he hath a Prerogative, Quod nullum tempus occurrit Regi, but he could not present, for the plenartie barred him of that, neither could he remoue him any way but by Action, to the end the Church might bee the more quiet in the meane time: * Neither did the King recouer dammages in his Quare impedit at the Common Law. But the sayd Statute (a) hath altered the Common law in the cases aforesayd, as namely, Quoad hoc, quod si pars rea accipiat de plenitudine Ecclesiæ per suam propriam præsentationem, non propter illam plenitudinem remaneat loquela, dummodo breue infra tempus semestre impetretur, &c. And also hath prouided remedie in the other cases, as by the sayd Act appeareth.

F.N.B.36 k.143.a.35.E.3. ca.3.13.R.2.ca 1.4.H.4. ca.21. 1.H.fo.19.

* Li.6 fo.51.Li.7 fo.19. 3.H.6.Dam.17.34.H.6. 28.12.E.3.Champerty 9 18.E.3.2.Temps E. 1.Quar. imp.181.

(a) W.2.ca 5.13.E.1.

(g) And if the King doe present to a Church, and his Clerke is admitted and instituted, yet before induction the King may repeale and reuoke his presentation. But regularly no man can be put out of possession of his Aduowson, but by admission and institution vpon a vsurpation by a presentation to the Church, Cum aliquis sius præsentandi non habens præsentauerit, &c. and not by collation of the Bishop: (h) And therefore if the Bishop collate without title, and his Clerke is inducted, this shall not put the rightfull Patron out of possession, for it shall be taken to be onely prouisionally made for celebration of diuine Seruice vntill the Patron do present, and therefore hee is not driuen to his Quare impedit, or Assise of Darreine presentment, in that case, but an Vsurpation by collation shall take away the right of Collation that is in another.

(g) 45 E.3.35.38.E.3.4. 25.E.3.47.13.El.Dy.292. Rey.302.&c.18 El.Dy.348. 14.E.4.2.7.H.4.32 31.E.1 Quar.imp.185. W.2.vb. sup.

(h) 17.E.3.64.

It is to be obserued, That an vsurpation vpon a Presentation shal not only put out of possession him that hath right of presentation, but right of Collation also. Therefore at this day the Incumbent shall be removed in a Quare impedit, or Assise of Darreine presentment, if there be not a Plenartie by sixe moneths before the Teste of the writ, but then the Incumbent must be named in the writ, or else he shall neuer be removed: yet at the Common Law, if the Ordinarie refused to admit and institute the Clerke of the Patron, or when any disturbed him to present, so as he could not preferre his Clerke, he might haue his Quare impedit, or Assise de Darreine presentment, and if the Church were not full, haue a writ to the Bishop to admit his Clerke: but so odious was Symonie in the eye of the Common Law, that before the Statute of W.2. he recouered no dammages. At the Common Law, if hanging the Quare impedit against the Ordinarie for refusing of his Clerke, and before the Church were full, the Patron brought a Quare impedit against the Bishop, & hanging the Suit, the Bishop admit & institute a Clerk at the presentation of another, in this case if Iudgement be giuen for the Patron against the Bishop, the Patron shall haue a writ to the Bishop, and remoue the Incumbent that came in pendente lite by vsurpation, for pendente lite nihil innouetur, and therefore at the Common Law it was good policie to bring the Quare impedit against the Bishop as speedily as might be. And it is to be obserued, That albeit the Clerke that comes in pendente lite, by vsurpation, shall be removed, yet if the rightfull Patron, being a stranger to the writ, present pendente lite, and his Clerke is admitted and instituted, he shall not be removed, for else by the bringing of such Quare impedit against the Ordinarie, the rightfull Patron might bee defeated of his Presentation: and therefore euer after the Statute of Westm 2. amongst other things it was inquired ex Officio, if the Church were full, and of whose presentation, &c. and if the Plaintife should haue a writ to the Bishop, and his Clerke admitted (as in most cases he ought) yet may the rightfull Incumbent haue his remedie by Law.

9.H.6.32.& 56.19.H.6.68

18.E.2.Presentment 20. 50.E 3.Incumbent 19.21.H. 7,8 a.& b 9.Eliz.Dyer.260 F.N.B.32.14.H.8.31. 19 E.2.Dar.Pres.21. 10.E.3.17.9.H.6.31.

And as it was good policie (as hath beene sayd) to bring a Quare impedit as speedily as might be against the Bishop, so it is good policie at this day to name the Bishop in the Quare impedit, for then he shall not present by Laps. But seeing the Bishop shall not present by Laps because he is named in the writ, what then, after that the time be deuolued to the Metropolitan, shall not he present by Laps because he is not named? To this it is answered, That he shal not in that case present by laps, for the Metropolitan shal neuer present or collate by laps after sixe moneths, but when the immediate Ordinarie might haue collated by Laps within the sixe moneths, and had surceased his time. And so it is if the time be deuolued to the King for

30.E.3.tit.Quar.imp.Statb. 46.E.3 15.9 H.6.32 56. 19.H.6.58. L.5.E.4.115. 9.E.4.30.

11.H.4.8a

for the first step or beginning faileth, and in humane things Quod non habet principium, non habet finem. And all these points were resolved (*) in a Writ of Error brought by Richard Bishop of London, and Iohn Lancaster against Anthony Lowe upon a Judgement given against them in a Quare impedit in the Common Place for the Church of Winbishe. But nowe let vs heare what our Authour will saye vnto vs.

(*) Mich. 3. Iacobi.

Section 649.

CItem si le taile ad issue & soit disseisie, et puis il relessa per son fait tout son droit a le disseisor, en cest case nul droit de taile poit estre en le tenant en taile, pur ceo que il avoit releas tout son droit. Et nul droit poit estre en lissue en le taile durant le vie son pere. Et tiel droit del enheritance en le taile nest pas tout ousterment expire p force de tiel releas, &c. Ergo, il couient que tiel droit demurt en abeiance, vt supra, durant la vie le tenant en taile, que relessa, &c. & apres son decease donque est tiel droit maintenant en son issue en fait, &c.

ALso if Tenant in tayle hath issue and is disseised, and after he releaseth by his Deed all his right to the Disseisor. In this case no right of taile can be in the tenant in taile, because hee hath released all his right. And no right can bee in the issue in taile during the life of his father. And such right of the Inherirance in the taile is not altogether expired by force of such release, &c. *Ergo*, it must needs be that such right remain in abeiance, *vt supra*, during the life of Tenant in taile that releaseth, &c. And after his decease such right presently is in his issue in deed, &c.

CLittleton having declared where a fee is in abeiance, & where a freehold and fee is in abeiance by Act in Law, & where a fee that is in abeiance may be charged. Here hee putteth two cases where a right of an estate taile may bee in abeiance by the act of the partie, which are so clere and euident, as there needs no further proofe or argument, then Littleton hath subtily and artificially made, albeit some obiections of no weight haue beene made against it. If tenant in taile of Lands holden of the King bee attainted of felony, and the King after office seiseth the same, the estate taile is in abeiance, there said to bee in suspence.

Plowd. fol. 552. 563. in Walsingham's case. 14.E.3. Discont. 5.

19 H.6.60. 20.Ass.p. Walsingham's case vbi supra.

C *Grant son estate concedit statum suum.* State or estate signifieth such Inheritance, Freehold, terme for yeares, Tenancie by statute Merchant, Staple, Elegit or the like, as any many hath in Lands or tenements, &c. And by the grant of his estate, &c. as much as he can grant shall passe, as here by Littletons case appeareth Tenant for life the remaynder in taile, the remaynder to the right heires of Tenant for life, Tenant for life grant totum statum suum to a man and his heires, both estates doe passe.

Vid. Sect. 65. 524. 525. 526. 44.E.3.10. 44.Ass.28. 43.Ass.8. 5.H.7.30.

44.Ass.28. 44.E.3.10

C *Right.* Ius, siue rectum (which Littleton often vseth) signifieth property, and specially in Writs and pleadings, when an estate is turned to a right, as by Discontinuance, Disseisin, &c. where it shall be said, Quod ius discendit & non terra. But (right) doth also include

20.H.6.9.

Sect. 650.

CEn mesme le maner est, lou tenant en taile grant a tout son estate a vn auter, & cest cas le grauntee nad estate forsque pur terme de

IN the same manner it is where Tenant in taile grant all his estate to another. In this case the Grantee hath no estate but for terme of life of the Tenant

clude the estate in esse in conueyances, and therefore if Tenant in fee simple make a Lease for yeares, and release all his right in the land to the Lessee and his heires, the whole estate in fee simple passeth.

Vide Sect.455. Pl.Com.484 Lib.8.fol.153. Altham: case 39.H.6.38.

And so commonly in fines, the right of the Land includeth and passeth the state of the Land, as A. cognouit tenementa prædicta esse ius ipsius B. &c. And the Statute (a) saith, Ius suum defendere, (which is) statum suum. And note that there is Ius recuperandi, ius intrandi, ius habendi, ius retinendi, ius percipiendi, & ius possidendi.

(a) *W.2.Cap.3. Pl.Com.484. & 487.b.*

Title, properly (as some say) is when a man hath a lawfull cause of entrie into Lands whereof another is seised, for the which hee can haue no Action, as title of condition, title of Mortmaine &c. But legally this word (Title) includeth a right also, as you shall perceiue in many places in Littleton: and title is the more generall word, for euery right is a title, but euery title is not such a right for which an Action lyeth, and therefore Titulus est iusta causa possidendi quod nostrum est, and signifieth the meanes whereby a man commeth to land, as his title is by fine or by feoffment, &c. And when the Plaintife in Assise maketh himselfe a title, the Tenant may say, Veniat Assisa super titulum, which is as much to say, as vpon the title which the Plaintife hath made by that particular Conueyance, Et dicitur titulus à tuendo, because by it he holdeth and defendeth his Land, and as by a release of a right a title is released, so by release of a title a right is released also. See more hereof in Fitzherbert and Brookes Abridgements in the title of Title.

Vide Sect.429.659. &c.

6.H.7.8.a. Altham case vbi supra.

¶ *Interest*, Interesse is vulgarly taken for a terme or chattle real, and more particularly for a future tearme, in which case it is said in pleading that hee is possessed De interesse terimni. But Ex vi termini in legall vnderstanding it extendeth to Estates, Rights and Titles, that a man hath of, in, to, or out of Lands, &c. for he is truly said to haue an interest in them: and by the grant of totum interesse suum in such Lands as well reuersions as possessions in fee simple shall passe. And all these words singularly spoken are nomina collectiua, for by the grant of totum statum suum in Lands all his Estates therein passe. Et sic de cæteris.

Pl.Com fol.374.in Seignior Zouches case et fol.487.& 448. in Nichols case.

23.H.8.Taile Br.32. 35.H.8.Grant Br.150. Vide 16.Eliz. Dier 325.b. Titulum.

¶ *Ne vnques auera briefe de waste, &c.* So it is if Tenant for life be, the remaynder in tayle, and he in the remaynder release to the Tenant for life, all his right and state in the Land. Hereby it is said in our Bookes, that the estate of the Lessee is not inlarged, but the release serueth to this purpose to put the estate taile into abeiance, so as after that he in the remaynder cannot haue an Action of Waste; yet in that case (sauing reformation) the Lesse for life hath an estate for the life of Tenant in tayle expectant vpon his owne life. But if Tenant in fee release to his Tenant for life all his right, yet he shall haue an Action of Waste. And if Tenant in taile make a Lease for his owne life, hee shall haue an Action of Waste.

43.Ass.p.13.41.E.3.fit Waste 83. 11.H.4.67. 13.H.7.10. Pl.Com.482. Per Dier 27.H.8.20.

42.E.3.23.

F.N.B.60.H.41.E.3.Waste 83. 42.E.3.18.

vie del tenant en le taile et le reuersion d̄ le taile nest pas en le tenant en taile, pur ceo q̄ il auoit graunt tout son estate et son droit, &c. Et si le tenant a que le graunt fuit fait fist waste, le tenant en le taile ne vnq̄s auera breife de waste, pur ceo que nul reuersion est en luy. Mes le reuersion et le enheritance de le taile, durant le vie le tenant en le taile, est en abeiance, cestascauoir, tantsolement en le remembrance, consideration, et intelligence de la ley.

in taile, and the reuersion of the taile is not in the Tenant in taile, because he hath granted all his estate and his right, &c. And if the Tenant to whom the grant was made make waste, the Tenant in taile shall not haue a Writ of waste, for that no reuersion is in him, but the reuersion and inheritance of the taile during the life of the Tenant in taile is in abeiance, that is to say, only in the remembrance, cõsideration, and intelligence of the Law.

Section 651.

¶ Item ſi vn Eueſque alien terres que ſont parcel de ſon Eueſquery & deuy, ceo eſt vn diſcontinuance a ſon ſucceſſor, pur ceo que il ne poit enter, mes eſt mis a ſon breife De Ingreſſu ſine aſſenſu capituli.

ALſo if a Biſhop alien lands which are parcell of his Biſhopricke and die, this is a diſcontinuance to his ſucceſſor, becauſe he cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu capituli.*

Of this ſufficient hath beene ſaid (how the Law ſtandeth at this day) before in this Chapter.

Sect. 652.

¶ Item ſi vn Dean alien terres queux il ad en droit de luy et ſon Chapiter, & mourust, ſon ſucceſſor poit enter. Mes ſi le Deane eſt ſole ſeiſie come ẽ droit ſon Deanry donque ſon alienation eſt diſcontinuance a ſon ſucceſſor come eſt dit adeuant.

ALſo if a Deane alien lands which he hath in right of him and his Chapter and dieth, his ſucceſſor may enter. But if the Deane bee ſole ſeiſed as in right of his Deanry, then his alienation is a diſcontinuance to his ſucceſſor as is ſaid before.

¶ Hereof alſo that which was neceſſary is before ſaid in this Chapter, and Littletons owne words are plaine and euident.

22.E.4 *tit. Feoffments, & faits* 29.
21.E.4.85.86.

Sect. 653.654.655 & 656.

¶ Item peraduenture aſcuns voilont arguer et dire, que ſi vn Abbe et ſon Couent ſont ſeiſies en lour demeſne come de fee de certaine terres a eux et a lour ſucceſſors, &c. et l'Abbe ſans aſſent d' ſon Couent alien meſmes les terres a vn auter et deuie, ceo eſt vn diſcontinuance a ſon ſucceſſor, &c.

ALſo peraduenture ſome will argue and ſay, that if an Abbot and his Couent bee ſeiſed in their demeſne as of fee of certaine lands to them and to their ſucceſſors, &c. and the Abbot without the aſſent of his Couent alien the ſame lands to another and die, this is a diſcontinuance to his ſucceſſor, &c.

Sect. 654.

¶ Per meſme le reaſon ils voilent dire, que lou vn Dean et Chapter ſont ſeiſies de certain terre a eux et a lour ſucceſſors, ſi le Dean alien meſme la terre, &c. ceo

BY the ſame reaſon they will ſay, that where a Deane and Chapter are ſeiſed of certaine lands to them and their ſucceſſors, if the Deane alien the ſame lands,

ceo ſerroit vn diſcontinuance a ſon ſucceſſor iſſint q̄ ſon ſucceſſor ne poit enter,&c. A ceo poit eſtre reſpondue que il y ad grand diuerſity penter les deux caſes.

&c. this ſhall be a diſcontinuance to his ſucceſſor, ſo as his ſucceſſor cannot enter,&c. To this it may be anſwered, that there is a great diuerſitie betweene theſe two caſes.

Sect.655.

CAr quant vn Abbe & l'Couent ſont ſeiſies, vncore ſils ſont diſſeiſie, Labbe auera aſſiſe en ſon noſm̄ demeſne, ſans noſmer le Couent,&c. Et ſi aſcun voile ſuer Præcipe quod reddat, &c. de meſmes les terres quant ils fueront en le maine Labbe et Couent, il couient que tiel action real ſoit ſue enuers Labbe ſolement ſans noſme la Couent, pur ceo q̄ touts ſont moꝛts perſons en la ley, foꝛſque Labbe que eſt le ſoueraigne,&c. Et ceo eſt per cauſe del ſoueraigntie; Car autrement il ſerroit foꝛſque come vn de les auters Moignes de le Couent,&c.

FOr when an Abbot, and the Couent are ſeiſed, yet if they bee diſſeiſed, the Abbot ſhall haue an aſſiſe in his owne name without naming the Couent,&c. And if any will ſue a *Præcipe quod reddat, &c.* of the ſame lands when they were in the hands of the Abbot and Couent, it behoueth that ſuch action reall be ſued againſt the Abbot only without naming the Couent, becauſe they are all dead perſons in Law, but the Abbot who is the ſoueraigne,&c. and this is by reaſon of the ſoueraignty; For otherwiſe he ſhould bee but as one of the other Monkes of the Couent,&c.

Sect.656.

CMes vn Dean et le Chapter ne ſont moꝛts ꝑſons en la ley,&c. car cheſcun de eux poit auer action per ſoy ẽ diuers caſes. Et de tiels terres ou tenemẽts q̄ le Deane et Chapter ont en common,&c. ſils ſoient diſſeiſies, le Deane et Chapter aueront vn aſſiſe, et nemy le Deane ſole,&c. Et ſi auter voile auer action real de tiels terres ou tenements enuers le Deane, &c. il couient de ſuer enuers le Deane et chapter, et nemy enuers le Deane ſole,&c. et iſſint il appiert

BVt Deane and Chapter are not dead perſons in Law,&c. for euery of them may haue an action by himſelfe in diuers caſes. And of ſuch lands or tenements as the Deane and chapter haue in common,&c. if they bee diſſeiſed, the Deane and Chapter ſhall haue an aſſiſe, and not the Deane alone,&c. And if another will haue an action reall for ſuch lands or tenements againſt the Deane,&c. he muſt ſue againſt the Deane and Chapter, and not againſt the Deane alone, &c. and ſo there appeareth a

appiert grand diuerſitie perenter les deux caſes, &c.

great diuerſitie betweene the two caſes, &c.

¶ These are apparant and need no explanation. Hauing in the 655. Section mention is made of the Præcipe quod reddat which in this place is intended of a reall action whereby land is demanded, and is ſo called of the words in euery ſuch writ.

And the reaſon of this, diuerſity betweene the caſe of the Abbot and Couent, and Deane and Chapter is, for that (as hath beene ſaid) the Monkes are regular, and ciuilly dead, and the Chapter are ſecular, and perſons able and capable in Law. But by the policy of Law the Abbot himſelfe (here termed the ſoueraigne) albeit he be a Monke and regular, yet hath he capacity and ability to ſue and be ſued, to enfeoffe, giue, demiſe and leaſe to others, and to purchaſe and take from others, for otherwiſe they which right haue ſhould not haue their lawfull remedy, nor the houſe remedie againſt any other that did them wrong, neither could the houſe without ſuch capacitie and ability ſtand. And the Couent haue no other ability or capacitie, but only to aſſent to eſtates made to the Abbot, and to eſtates made by him, which for neceſſities ſake, though they be ciuilly dead, they may doe.

Vid.Sect.200. 8.E.3.27. 11.H.4.84. 21.E.4.86. 11.H.7.12.

Sect. 657.

¶ Item ſi le Maſter dun Hoſpitall diſcontinue certaine terre de ſon Hoſpitall, ſon ſucceſſor ne poit entrer, mes eſt mis a ſon briefe de ingreſſu ſine aſſenſu confratrum & conſororum &c. Et touts tiels briefes pleinment appearõt en l'Regiſter, &c.

ALſo if the Maſter of an Hoſpitall diſcontinue certaine land of his Hoſpitall, his ſucceſſor cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu confratrum & conſororum, &c.* And all ſuch writs fully appeare in the Regiſter, &c.

¶ This muſt alſo be vnderſtood where the Maſter of the Hoſpitall hath ſole and diſtinct poſſeſſions, and not where he and his brethren are ſeiſed as a body politique aggregate of many. And here Littleton (as diuers times before) doth cite the Regiſter.

Sect. 658.

¶ Item ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le taile, ſauant le reuerſion al leſſor, et puis celuy en le remainder diſſeiſiſt le tenant a terme de vie, et fait vn feoffment a vn auter en fee, et puis mourſt ſans iſſue, et le tenant a terme de vie mourſt, il ſemble en ceſt cas, q̃ celuy en la reuerſion bien puit enter ſur le feoffee, pur eo que celuy en le remainder que fiſt le feoffment, ne fuit vnque ſeiſie en le taile per force de meſme le remainder, &c.

ALſo if land bee lett to a man for terme of his life, the remainder to another in taile ſauing the reuerſion to the Leſſor, and after he in the remainder diſſeiſeth the Tenant for terme of life, and maketh a feoffment to another in fee, and after dyeth without iſſue, and the Tenant for life dyeth. It ſeemeth in this caſe that hee in the reuerſion may well enter vpon the Feoffee, becauſe hee in the remainder which made the feoffment was neuer ſeiſed in taile by force of the ſame remainder, &c.

Vid.Sect.637.592.596.597. 601.640.641. Vid.Sect.637.

¶ HEre it appeareth, That albeit the Feoffor hath an Estate Taile in him expectant vpon an estate for life, yet his Feoffement worketh no Discontinuance. wherein Littleton doth adde a limitation to that which in this Chapter he had generally said, viz. That an Estate Taile cannot be discontinued, but where he that maketh the Discontinuance was once seised by force of the Taile, which is to be vnderstood when hee is seised of the Freehold and Inheritance of the Estate in Taile, & not where he is seised of a Remainder or a Reuersion expectant vpon a Freehold: which Freehold (as often hath been sayd) is euer much respected in Law.

CHAP.12. Of Remitter. Sect.659.

¶ HEere our Author hauing next before treated of a Discontinuance, very aptly beginneth this Chapter with a description of a Remitter.

¶ *Remitter est vn antient terme en la Ley*, and is derived of the Latyne Verbe Remittere, which hath two significations, either, To restore and set vp againe, or to cease. Therefore a Remitter is an operation in Law vpon the meeting of an antient right remediable, and a latter state in one person where there is no follie in him, whereby the antient right is restored and set vp againe, and the new defeasible estate ceased and vanished away. And the reason hereof is, for that the law preferreth a sure and constant right, though it bee little, before a great Estate by wrong and defeasible, and therefore the first and more antient is the most sure and more worthy title; Quod pri⁹ est, verius est, & quod prius est tempore, potius est iure: (a) Therefore in ante Bookes in stead of Remitter, say, That he is En son primer estate, or en son melior droit, or En son melior Estate, or the like.

(a) 25.Ass.pl.4. 33.Ass.pl. 11.26.E.3.69.11.H.4 50.a. 41.E.3.17.b.Entr. Remitter 11. 6.E.3.17.

¶ *Lou home ad deux Titles*. Heere this word (Titles) is taken in the largest sence, including rights, for being properly taken (b) as in case of a condition, mortmaine, assent to a Mauisher,

(b) V.Sect.429 & 659.&c. 34.H.8.tit.Remitter Br.10. 44.E.3.Attaint.22.38.Ass. pl.7.

¶ R Emitter ẽ vn antiẽt termñ en la Ley, et est lou home ad deux titles a terres ou tenẽts, ſ. vn pluſ antient title, et vn auter title pluſ darrein, et il vient a la terre per le pluis darreine title, vncore la Ley luy adiudgera eins per force dl pluſ eigne title, pur ceo q̃ le pluis eigne titl' est le pluis ſure title, et pluis digne title. Et donque quant home est adiudge eins per force ď ſon eigne titl', ceo est a luy dit vn remitter, pur ceo que la ley luy mitter deſtre eins en la terre per le pluis eigne et ſure title. Sicome tenãt en l' taile diſcontinua la taile, et puis il diſſeiſiſt ſ̃ diſcontinuee, et iſſint mozust ſeiſie, per que les tenemẽts diſcendont a ſon iſſue ou coſine, inheritable

R Emitter is an antient terme in the Law, and is where a man hath two titles to Lands or Tenements, *viz.* one a more antient title, and another a more latter title, and if he come to the land by a latter Title, yet the Law will adiudge him in by force of the elder title, because the elder title is the more sure and more worthie Title. And then when a man is adiudged in by force of his elder title, this is sayd a Remitter in him, for that the Law doth admit him to be in the Land by the elder and surer Title. As if Tenaunt in Taile discontinue the Taile, and after hee disseiseth his Discontinuee and so dieth seised, whereby the Tenements discend to his Issue or cosine inheritable by

per

per force de le Taile, en ceſt caſe, ceo eſt a luy a que les Tenements diſcendont q̄ ad droit per force de le Taile, vn remitter a le Taile, pur ceo q̄ le Ley luy mitte et adiudge deſtr̄ eins p force de l' taile que eſt ſon eigne title, car il ſerroit eins per force de le diſcent, donques le Diſcontinuee puiſſoit auer Briefe de Entre ſur diſſeiſin en le Per, enuers luy, et recoueroit les tenem̄ts et ſes dammages, &c. Mes entāt que il eſt eins en ſon remitter per force de le Taile, le title et le intereſt le diſcontinuee, eſt tout ouſterment anient et defeat, &c.

force of the Tayle: In this caſe this is to him to whom the Tenements diſcend, who hath right by force of the Tayle, a Remitter to the Tayle, becauſe the Law ſhall put and adiudge him to bee in by force of the Tayle, which is his elder Title: for if hee ſhould bee in by force of the diſcent, then the Diſcontinuee might haue a Writ of Entrie *Sur Diſſeiſin* in the *Per* againſt him, and ſhould recouer the Teneméts & his dammages, &c. but in as much as he is in his remitter by force of the taile, the title & intereſt of the Diſcontinuee is quite taken away and defeated, &c.

and the like, there is no remitter wrought vnto them, becauſe theſe are but bare titles of Entrie, for the which no Action is giuen, but a Remitter muſt be to a precedent right: And Lit. in this Chapter putteth all his caſes onely of Remitters, to Rights remediable.

¶ *Et vn auter Title pluis darreine, &c.* Here is to bee obſerued, That an Eſtate muſt worke a Remitter to an antient right, for albeit two rights doe diſcend, there can be no Remitter, becauſe one right cannot worke a Remitter to another: for regularly to euerie remitter there be two incidents, viz. an antient right and a defeaſible eſtate of Freehold comming together. 19.H.6.50.78 45. tit. Entre cong 3. Pl. com 246.a.

¶ *Le pluis eigne title eſt le pluis ſure Title, & pluis digne title.* So as the eldeſt title is worthily (as hath beene ſayd) preferred, becauſe it is the more ſure and more worthie.

¶ *Sicome Tenant en Taile diſcontinue le taile, &c.* Here our Author according to his accuſtomed manner, to illuſtrate his deſcription putteth an example of a Remitter, where the Law preferreth the antient eſtate by right, before a new Eſtate defeaſible. And this Remitter is wrought by an Eſtate caſt vpon the Iſſue in Tayle by diſcent, which is an Act in Law, and the diſcent of the land in poſſeſſion, and the right of Eſtate Taile diſcend together. 19.H.6.51.62.

¶ *Eſt tout ouſterment anient & defeat, &c.* Here be two things implied and to be vnderſtood: Firſt, That this Remitter is wrought in this caſe by operation of Law vpon the Freehold in Law diſcended without any entrie. Secondly, That the Law ſo fauoureth a Remitter, (being a reſtoring to right) that if the Diſcontinuee be an Enfant or a Feme couert, and Tenant in Tayle after a Diſcontinuance diſſeiſe them and die ſeiſed, the Iſſue ſhall be remitted without any reſpect of the priuiledge of Enfancie or Couerture, and therefore our Author ſayd, Le title & intereſt le Diſcontinuee eſt tout ouſterment anient & defeat. 11.E.4.1.

¶ *Donques le Diſcontinuee, &c.* Heere is a reaſon added in this particular Caſe, that fitteth not other caſes of Remitter; for in this caſe and many other, the Law that abhorreth Suits of vexation, doth auoyd circuitie of Action, for the Rule is, Circuitus eſt euitandus. 11.E.3.tit.Aſſ.85.4.E.4.35 11.R.2.Bar.242. 30.E.3.8. 6.E.3.7. 19.H.6.63.24.E.3 70. 14.H.4.27. 10.H.7.11. F.N.B.Meſne & Waſt.

Sect. 660.

¶ Item ſi le tenāt en Tayle enfeoffa ſon fits

ALſo if Tenant in Tayle infeoffe his Sonne in Fee,

¶ OVr Author hauing put one example where both the Rights diſcend together, now puts another example where the Temp. E.1. Remit.13. 11.E.3 Age 5.38.E.3.24.40.E.3. 43.21.E.4.19.

the Iſſue in Tayle claimeth by purchaſe in the life of Tenant in Taile, and the antient right diſcendeth after to the ſame Iſſue.

¶ *Car coment que tiel Heire fuit de pleine age al temps del mort, &c.* The reaſon is, Becauſe no follie can bee adiudged in the Infant at the time of the acceptance of the Feoffement. Therefore the Law reſpecteth the time of the Feoffement, and not the time of the death: and albeit hee might haue waiued the eſtate which her had by the Feoffement at his full age, yet here it appeareth, that the right of the Eſtate taile diſcending to him either within age, or of full age, ſhall worke a Remitter in him, for that the Waiuer of the ſtate ſhould haue bin to his loſſe and preiudice.

27.H.8.c.10. of Vſes. 35.H.8 Dy.54.b.6.E.6.ib.77.1.& 2 P.&M.116.2.& 2.P.&M. 129.191.28.H.8.23.b. Pl.Com. Amy Townſends caſe ſo. 34.H.8.tit.Remit.Br.49.

Since Littleton wrote, and after the Statute of 27. H 8. cap.10. if Tenant in Tayle make a Feoffement in Fee to the vſe of his Iſſue beeing within age, and his Heyres, and dyeth, and the right of the Eſtate Tayle diſcend to the Iſſue being within age, yet he is not remitted, becauſe the Statute executeth the poſſeſſion in ſuch plite manner and forme as the vſe was limited: Et ſic de ſimilibus, ſo as there is a great change of Remitters ſince Littleton wrote.

Pl.Com vb.ſup.

But if the Iſſue in Tayle in that caſe waiue the Poſſeſſion, and bring a Formedon in the Diſcender, and recouer againſt the Feoffees, hee ſhall thereby be remitted to the Eſtate Taile, otherwiſe the Lands may be ſo incumbred, as the Iſſue in Tayle ſhould be at a great inconuenience: but if no formdon be brought, if that Iſſue dieth, his Iſſue ſhall bee remitted, becauſe a ſtate in fee ſimple at the Common Law diſcendeth vnto him.

¶ *Eſteant de pleine age il charge per ſon fait,* en fee, ou ſon Coſine inheritable per force de le taile, le quel fits ou coſin al temps de feoffement eſt deins age, et puis le tenant en le taile deuia. et celuy a que le feoffemēt fuit fait eſt ſon heyre per force de le Taile, ceo eſt vn remitter al heire en le taile a que le feoffment fuit fait. Car coment que durant la vie le Tenāt en le taile que fiſt le Feoffement, tiel heire ſerra adiudge eins p force de le feoffment, vncore apres la mort le tenant en le tayle, heire ſerra adiudge eins per force de le taile, et nemy p force de le Feoffment. Car coment que tiel heire fuit de pleine age al temps de le mort de le Tenaunt en le Taile que fiſt le Feoffement, ceo ne fait aſcun matter, ſi luy fuit deins age al tēps del feoffmt fait a luy. Et ſi tiel heire eſteant deins age al temps de tiel Feoffement, vient al pleine age viuant le Tenāt en le Taile, que fiſt le Feoffement, et iſſint eſteant de pleine age, il charge per ſon fait meſme la Terre oue vn

or his Coſine inheritable by force of the Taile, which Sonne or Coſine at the time of the Feoffment is within age, and after the Tenant in Taile dieth, and hee to whome the Feoffement was made is his heire by force of the Taile, this is a Remitter to the heire in taile to whom the Feoffement was made: for albeit that during the life of the Tenant in Tayle who made the Feoffement, ſuch heire ſhall bee adiudged in by force of the Feoffement, yet after the death of Tenant in Taile, the heire ſhall be adiuged in by force of the Taile, & not by force of the feoffment. For although ſuch heire were of full age at the time of the death of the Tenant in Taile who made the Feoffment, this makes no matter, if the heire were within age at the time of the feoffement made vnto him. And if ſuch heire beeing within age at the time of ſuch feoffmēt, commeth to full age, liuing the tenant in tayle that made the feoffement, & ſo being of full age he charges by his deed

vn common de pasture, ou oue vn rent charge, & puis le tenant en le taile muse, ore il semble que le terre est discharge del common, et de le rent, pur ceo que le heire est eins de auter estate en la terre, que il fuit al temps de le charge fait, entant que il est en son remitter per force de le tayle, & illint lestate, que il auoit al temps de le charge, est oustermēt defeat, &c.

the same Land with a common pasture or with a rent charge, and after the Tenant in tayle dieth, now it seemeth that the Land is discharged of the Cōmon, and of the rent for that the heire is in of another Estate in the Land then hee was at the time of the charge made, in as much as hee is in his Remitter by force of the tayle, and so the estate which hee had at the time of the charge is vtterly defeated, &c.

&c. The reason is because the Grantor had not any right of the estate in taile in him at the time of the grant but only the estate in fee simple gained by the feoffment, which (as Littleton here saith) is wholy defeated. And the state of the land out of which the rent issued, being defeated the rent is defeated also.

But if Tenant in tayle make a Lease for life whereby he gaineth a new reuersion in fee, so long as Tenant for life liueth, and he granteth a rent charge out of the Reuersion, and after Tenant for life dieth, whereby the Grantor becommeth Tenant in tayle againe, and the Reuersion in fee defeated, yet because the Grantor had a right of the entayle in him, clothed with a defeasible fee simple, ỹ rent charge remayneth good against him, but not against his issue, which diuersitie is

11.H.7.21. Edriches case.

worthy of obseruation, for it openeth the reason of many Cases.

If the heire of the Disseisee disseise the Disseisor, and grant a rent charge, and then the Disseisee dieth, the Grantor shall hold it discharged, for there a new right of entrie doth discend into him, and therefore he is remitted.

So if the father disseise the Grandfather and granteth a Rent charge, and dieth, now is the entry of the Grandfather taken away, if after the Grandfather dieth, the Sonne is remitted, and he shall auoid the charge. So as where our Author putteth his example of a fee tayle, it holdeth also in case of a fee simple.

¶ *Vn common de pasture, ou vn rent charge, &c.* Here Littleton putteth his case of things granted out of the Land. But what if the issue at full age by Deed indented, or deed poll make a Lease for yeares of the Land, and after by the death of Tenant in tayle he is remitted, whether shall he auoide the Lease or no. And it is holden he shall not, because it is made of the Land it selfe, and the Land is become by the Lease in another plight, then it is in the case of a grant of a Rent charge, which I gather out of our Authors owne words in another place.

33.H.8. Dier 52.b.

Vide Sect. 289.

¶ *La terre est discharge del rent, &c.* Littleton doth adde these words materially because the whole grant is not thereby auoyded, but the Land discharged of the Rent charge, for the Grantee shall haue notwithstanding a Writ of Annuitie and charge the person of the Grantor.

Lib.2.fol.36.b. Wards case.

Section 661.

¶ Item vn prin-cipall cause pur que tiel heire en les cases auandits & auters cases semblables serra dit en son remitter, est pur ceo que il ny ad ascū person enuers que il poit suer son briefe ō

ALso a principall cause why such heire in the Cases aforesaid, & other like cases shall bee said in his Remitter, is for that there is not any person against whom he may sue his writ of *Formedon*. For against

¶ VN *principall cause pur que &c.* And of this opinion is (d) Littleton in our Bookes.

(d) 12.E.4.20.

41.E.3.18. 11.H.4.50.

¶ *Il nad ascun person enuers que, &c. sicome il auoit loialment recouer mesme la terre vers vn auter, &c.* Here it is to be vnderstood that regularly

Lib.3 fol.3. the Marqueſſe of Winchesters caſe.

ly a man ſhall not bee remitted to a right remedileſſe, for the which he can haue no Action for Littleton here ſaith, that there is no perſon againſt whom the iſſue when hee commeth to the land without folly may bring his Action, and ſayth alſo, that this is the principall cauſe of the Remitter, for neither an Action without a right, nor a right without an Action can make a Remitter. As if tenant in tayle ſuffer a common recouery in which there is error, and after Tenant in tayle diſſeiſeth the recoueror and dieth, here the iſſue in tayle hath an Action, viz. a Writ of Error, but as long (as the recouerie remayneth in force) he hath no right, and therefore in that caſe there is no Remitter.

Formedon. Car enuers luy meſme, il ne poit ſuer, & il ne poit ſuer enuers nul auter, car nul auter eſt tenant del frankte-nement, et pur cel cauſe la ley luy adiudge eins en ſon remitter, ſ. ẽ tiel plite, ſicome il auoit loialment recouer meſme la terre enuers vn auter, &c.

himſelfe he cañot ſue, and hee cannot ſue againſt any other, for none other is Tenant of the freehold, and for this cauſe the Law doth adiudge him in his Remitter, s. in ſuch plite, as if hee had lawfully recouered the ſame Land againſt another, &c.

If B. purchaſe an Aduowſon and ſuffereth an vſurpation and ſixe moneths to paſſe, and after the vſurper granteth the Aduowſon to B. and his heires, B dieth, his heire is not remitted becauſe his right to the Aduowſon was remedileſſe, viz. a right without an Action.

5.H.7.35. Tenant in tayle of a Mannor whereunto an Aduowſon is appendant maketh a Diſcontinuance, the Diſcontinuee granteth the Aduowſon to Tenant in Tayle and his heires, Tenant in Tayle dieth, the Iſſue is not remitted to the Aduowſon, becauſe the Iſſue had no Action to recouer the Aduowſon before hee recouered the Mannor whereunto the Aduowſon was appendant. And ſo it is of all other Inheritances, regardant, appendant, or appurtenant, a man ſhall neuer bee remitted to any of them before hee recontinueth the Mannor, &c. whereunto they are regardant, appendant, or belonging.

Britton fol.126. Car nul ne poet claimer droit en les appurtenances ne en les acceſſories que nul droit ad en le principall.

(c) Braſt.lib.4.fol.243.b. (c) Item, excipi poteſt, &c. quamuis ius habeat in tenemento & pertinentijs, primo recuperare debet tenementum ad quod pertinet aduocatio, & tunc poſtea præſentet & non ante, & de hac materia in Rottulo de termino Sancti Michaelis, anno Regis Henrici tertio in comitatu Norff. de Thoma Bardolfe.

8.R.2. Quare Imp.199. 2.H.4.18. 14.H.6.15.16. 8.H.6.17. 33.H.6.15. F.N.B. 35.B. & 36.F. 24.E.3. Diſcont.16. 33.H.8. Dier 48.b.

But on the otherſide, if a man be remitted to the principall, he ſhall alſo be remitted to the appendant or acceſſory albeit it were ſeuered by the Diſcontinuee, or other wrong doer. And therefore if Tenant in tayle be of a Mannor whercunto an Aduowſon is appendant, and infeoffeth A. of the Mannor with the appurtenances. A. re-infeoffeth the Tenant in tayle ſaving to himſelfe the Aduowſon, Tenant in tayle dieth, his iſſue being remitted to the Mannor is conſequently remitted to the Aduowſon, although at that time it was ſeuered from the Mannor. So it is in the ſame caſe if Tenant in tayle had beene diſſeiſed, and the Diſſeiſor ſuffer an vſurpation, if the Diſſeiſee enter into the Mannor, hee is alſo remitted to the Aduowſon.

Sect. 662.

¶ Item ſi terre ſoit taile a vn home & a ſa feme, et a les heires d lour deux corps engendres, les queux ont iſſue file, et le feme deuy, et le baron prent auter feme, et ad iſſue vn auter file, & diſcontinua le tayle, & puis diſſeiſie le diſcontinuee et iſſint mort ſeiſie, ore le terre diſcendera

ALſo if Land bee entailed to a man and to his wife, and to the heires of their two bodies begotten, who haue iſſue a daughter, and the wife dieth, and the husband taketh another wife, and hath iſſue another daughter, and diſcontinue the taile, and after he diſſeiſeth the Diſcontinuee and

dera a les deux files. Et en ceſt caſe quant al eigne file, que eſt inheritable per force de le tayle, ceo neſt vn remitter forſque de le moity. Et quant al auter moity el eſt mis a ſuer ſon action de Formedon enuers ſa ſoer. Car en ceſt cas les deux ſoers ne ſont pas tenants en parcenary, mes ſont tenants en common, pur ceo que ils ſont eins per diuers titles. Car lun ſoer eſt eins en ſon remitter per force de le taile quãt a ceo que a luy affiert, et lauter ſoer eſt eins quant a ceo que a luy affiert en fee ſimple per l' diſcent ſon pier, &c.

ſo die ſeiſed, now the Land ſhall diſcend to the two Daughters. And in this caſe as to the eldeſt daughter, who is inheritable by force of the tayle, this is no remitter but of the moitie. And as to the other moitie ſhee is put to ſue her action of *Formedon* againſt her ſiſter. For in this caſe the two ſiſters are not tenants in parcenarie, but they are Tenants in common, for that they are in by diuers titles. For the one ſiſter is in in her remitter by force of the entaile, as to that which to her belongeth, and the other ſiſter is in as to that to her belongeth in fee ſimple by the diſcent of her father, &c.

¶ *Eo neſt remitter forſque pur le moitie, &c.* Here Littleton putteth a caſe where the iſſue in taile ſhal be remitted to a moity, becauſe but a moitie of the Land diſcended vnto her, and there cannot be any remitter, but for ſo much as commeth to the iſſue by diſcent, or by any other meanes without his folly, and in this caſe by act in Law the Coparcenarie is defeated for the daughters are in by ſeuerall Titles, viz the eldeſt daughter is Tenant in tayle per formam doni by the remitter of the one moitie, and the youngeſt ſeiſed in fee ſimple by diſcent of the other moitie, againſt whom the other ſiſter in tayle may haue her Formedon. 44.E.3.26.19.H.6.59.

Sect. 663.

¶ Mesme le manner eſt, ſi tenant en taile enfeoffa ſon heire apparant en le taile eſteant lheire deins age, et vn auter iointenant en fee, et le tenant en tayle mozuſt, ozelheire en taile eſt en ſon remitter quãt a lun moity, et quant a lauter moity il eſt mis a ſon briefe de Formedon, &c.

IN the ſame manner it is if tenant in taile enfeoffe his heire apparant in tayle, (the Heire beeing within age) and another ioyntenant in fee, and the Tenant in tayle dieth, now the heire entayle is in his Remitter as to the one moitie, and as to the other moitie, hee is put to his Writ of *Formedon*, &c.

¶ *Le heire, &c. eſt en ſon remitter quant a lun moitie, &c.* Hereby it appeareth, that albeit ioyntenants bee ſeiſed pro indiuiſo per my & p tout yet each of thẽ hath in iudgement of Law but a right to a moitie, & therefore the iſſue in tayle in this caſe is remitted but to a moity & is tenant in Cõmon but with the other Feoffee. And ſo it is if the Diſcontinuee after the death of Tenant in tayle make a Charter of feoffment to the iſſue in tayle being within age who hath right, and to a ſtranger in fee, and make liuerie to the Infant in name of both: the iſſue is not remitted to the whole but to the halfe, for firſt hee taketh the fee ſimple, & after the Remitter is wrought by operation of Law, and therefore can remit him but to a moitie. But of this ſufficient hath beene ſaid in the Chapter of Joyntenants. *Vide Sect. 288.*

Section 664.

¶ Item si ten̄ en taile enfeoffa son heire apparant, iheire esteant de pleine age al temps de feoffment, et puis le ten̄ en taile mozust, ceo nest remitter al heir̄, pur ceo que il fuit sa folly que il esteant de pleine age voile prẽdre tiel feoffment, &c. Mes tiel folly ne poit estre adiudge en iheire esteāt deins age al temps del feoffment, &c.

ALso if Tenant in taile enfeoffe his heire apparant, the heire being of full age at the time of the feoffment, and after Tenant in taile dieth, this is no remitter to the heire, becauſe it was his folly, that being of full age hee would take ſuch feoffment, &c. but ſuch folly cannot bee adiudged in the heire being within age at the time of the feoffment, &c.

40.E.3.44. 18.E.4.25.

¶ By this Feoffment albeit the heire apparant hath ſome benefit in the life of his Anceſtor, yet is he thereby (beſides his owne) ſubiect during his life to all charges and incumbrances made or ſuffered by his Anceſtor. And therefore our Author ſaith well, Que il fuit ſon folly que il eſteant de pleine age voile prender tiel feoffment, but folly ſhall not be iudged in one within age in reſpect of his tender yeares, and want of experience.

Sect. 665.

¶ HEre Littleton putteth a caſe where the huſband within age by the intermarriage may bee remitted albeit hee gaineth but a freehold during the Couerture en auter droit.

Alſo here is to bee obſerued that the eſtate which doth in this caſe worke the Remitter could not haue continuance after the deceaſe of the wife. And ſo on the other ſide, if the huſband make a Diſcontinuance and take backe an eſtate to him and his wife, during the life of the huſband, this is a Remitter to the wife preſently albeit the eſtate is not by the limitation to haue Continuance after the deceaſe of the huſband, which caſe is proued by the reaſon of the caſe which our Author here putteth. And here our Author obſerueth the diuerſity when the huſband is within age, and when he is of full age, for when hee is within age no folly can be adiudged in him, as in this Chapter hath beene often ſaid.

¶ Item si tenant en taile enfeoffa vn feme en fee, et mozust, et son issue deins age prent meisme la feme a feme, ceo est vn remitt̄ al enfant deins age, et la feme donqz nad rien, pur ceo que le baron et sa feme sont forsque come vn person en ley. Et en cest cas le baron ne poit suer brefe de Formedon, sinon que il voiloit suer enuers luy meism̄, le quel serroit enconuenient, et pur cel cause la ley adiudgera iheire en son remitter, pur ceo que nul folly poit estr̄ adiudge en luy, esteāt deins

ALso if Tenant in taile enfeoffe a woman in fee, and dyeth, and his iſſue within age taketh the ſame woman to wife, this is a Remitter to the infant within age, and the wife then hath nothing, for that the huſband and his wife are but as one perſon in Law. And in this caſe the husband cannot ſue a writ of *Formedon*, vnleſſe he will ſue againſt himſelfe, which ſhould be inconuenient, and for this cauſe the Law adiudgeth the heire in his Remitter, for that no folly can bee adiudged in him being

deins age al temps despousels, &c. Et si lheire soit en son remitter per force de le taile, il ensuist per reason, q̃ la feme nad riens, &c. Car entant que le baron et sa fem̃ sont come vn person, la terre ne poit estre seuere per moities, et pur cel cause le baron est en son remitter de lentiertie: Mes auterment est si tiel heir̃ fuit de plein age al temps de les espousels, car donques le heire nad riens forsque en droit sa feme, &c.

within age at the time of the Espousells, &c. And if the heire bee in his remitter by force of the entaile, it followeth by reason that the wife hath nothing, &c. for inasmuch as the husband and wife be as one person the land cannot be parted by moities, and for this cause the husband is in his remitter of the whole. But otherwise it is if such heire were of full age at the time of espowsells, for then the heire hath nothing but in right of his wife, &c.

Here is also to bee noted that presently by the marriage within age, the husband is remitted, and the freehold and inheritance of the wife vanished cleane away.

¶ *Prist mesme la feme al sem.* Here it is good to be seene what things are giuen to the husband by marriage. First it appeareth here by Littleton, that if a man taketh to wife a woman seised in fee (f) he gaineth by the intermarriage an estate of freehold in her right, which estate is sufficient to worke a Remitter, and yet the estate which the husband gaineth depended vpon vncertaintie, and consisteth in priuity, (g) for if the wife be attainted of felony, the Lord by escheate shall enter and put out the husband, otherwise it is if the felony be committed after true had. Also if the husband bee attainted of felony, the King

(f) 13.H.4.6.Stanf.pl.7.b. 18.E.4.5. 11.H.7.19. 10.H.6.11. 7.H.6.9.b.

Vid.Sect.58.

(g) 4.Ass.P.4. 4.E.3.Bisse 166.

gaineth no Freehold but a pernancie of the profits during the Couerture and the Freehold remaineth in the wife. (h) Secondly, if shee were possessed of a terme for yeares, yet he is possessed in her right, but he hath power to dispose thereof by Grant or Demise, and if hee be Outlawed or attainted, they are gifts in Law.

(h) Pl.Com.fo.280.b. Dame Hales case, 50.Ass.5. 38.H.6.23. 21.E.4.35. 7.E.4.6. 7.H.7.2. 10.H.6.11.

(*) Upon an Execution against the husband for his debt, the Sheriffe may sell the terme during her life: but the husband can make no disposition thereof by his Last Will. Also if hee make no disposition or forfeiture of it in his life, yet it is a gift in Law vnto him if hee doe suruiue his wife, but if he make no disposition and die before his wife, shee shall haue it againe. And the same Law is of estates by Statute Merchant, Statute Staple, Elegit, Wardships and other chattels reall in possession.

(*) Mich.26.&.27.Eliz. inter Annar & Lodington in Brooks error adiudge in both Courts, lib.8.fo.96. Mat: Manning. case.

But if the husband charge the Chattell reall of his wife, it shall not binde the wife if shee suruiue him.

7.H.6.fo.2.

If a Feme sole be possessed of a Chattell reall, and be thereof dispossessed, and then taketh husband, and the wife dieth, and the husband suruiueth, this right is not giuen to the husband by the intermarriage, but the Executors or Administrators of the wife shall haue it, so it is if the wife hath but a possibility.

Vid.Sect.58.

In the same manner it is if the wife be possessed of Chattells reall in auter droit, as Executrix or Administratrix, or as Gardeine in Socage, &c. and she intermarrieth, the Law maketh no gift of them to the husband although he suruiueth her. In the same manner if a woman grant a terme to her owne vse, taketh husband, and dieth, the husband suruiuing shall not haue this trust, but the Executors or Administrators of the wife, (i) for it consisteth in priuity, and so hath it beene resolued by the Iustices. Chattells reall consisting meerely in Action the husband shall not haue by the intermarriage, vnlesse he recouereth them in the life of the wife, albeit he suruiue the wife, as a Writ of Right of ward, a valore maritagij, a forfeiture of marriage, and the like, whereunto the wife was intitled before the marriage.

Pl.Com.fo.394.Osborns case and there fo.192.b. Wrotesleys case.

(i) Pasch.32.Eliz.in Cancellar.in Withams case. Hill.38.Eliz.in Cancell. in Waterhouses case. Wrotesleys case, vbi supra.

But Chattells reall being of a mixt nature, viz. partly in possession, and partly in Action, which happen during the Couerture, the husband shall haue by the intermarriage, if hee suruiues his wife, albeit he reduceth them not into possession in her life time: but if the wife suruiueth him, she shall haue them. As if the husband be seised of a Rent seruice, Charge, or Seck, in the right of his wife, the rent become due during the Couerture, the wife dieth, the husband shall haue the arrerages; but if the wife suruiue the husband, she shall haue them, and not the Executors of the husband. So it is of an Aduowson, if the Church become voyd during the Couerture, (k) he may haue a Quare impedit in his owne name, as some hold: but the wife shall

13.E.3.Quare Imp.57. 14.H.4.12. 38.E.3.33.b. 50.E.3.13. 10.H.6.11. F.N.B.121. 22.H.6.25. 29.E.3.40. 11.R.2.Account 49. 12.R.2.brieue 639. 5.E.3.Enowm.99.

(k) 50.E.3.13. 28.H.6.9. 7.H.7.2.

shall haue it if she suruiue him, and the Husband, if he suruiue her, Et sic de similibus.

26.E.3.64. 10.H.6.11. F.N.B.121.22.H.6.25.

But if the arrerages had become due, or the Church had fallen voyd before the marriage, there they were meerely in Action before the marriage, and therefore the husband should not haue them by the Common Law, although he suruiued her. And so it is of Reliefes, Mutatis mutandis: (l) But now by the Statute of 32.H.8.cap.37. if the husband suruiue the wife, he shall haue the arrerages as well incurred before the marriage, as after.

(l) Li.4 fo.51. in Ognels case Hil.17.El.Rot.457. in Com. Banco, Sharps case. 21.E.4.4. 21.H.7.29. 11.H.7.4. 25.H.8.7.43.E.3 10. 3.H.6.23. 37.4.H.6.5. 14.E.2.Det.173.5.E.2.ibid. 169. 39.E.3. 48.E.3.12. 12.R.3.Bre.638.639. 16.E.4.8.16.H.6.Bre.939.

But the marriage is an absolute gift of all Chattels personalls in possession in her owne right, whither the husband suruiue the wife or no; but if they bee in Action, as debts by Obligation, Contract, or otherwise, the husband shall not haue them vnlesse he and his wife recouer them. And of personall Goods en auter droit, as Executrix or Administratrix, &c. the marriage is no gift of them to the husband, although he suruiue his wife.

(m) If an Estray happen within the Mannor of the wife, if the husband die before seisure, the wife shall haue it, for that the propertie was not in the wife before seisure.

(m) 43.E.3.8.V.10.H.6.11 39.E.3.17.

But as to personall Goods there is a diuersitie worthie of obseruation, betweene a propertie in personall goods, (as is aforesayd) and a bare possession, for if personall goods be bayled to a Feme, or if she finde goods, or if goods come to her hands as Executrix to a Bailife, and taketh a husband, this bare possession is not giuen to the husband, but the Action of Detinue must be brought against the husband and wife.

But now let vs heare Littleton.

Vi.Sect.87.&c.

¶ *Le quel serra inconuenient.* **This argument** ab inconuenienti, **our** Author hath vsed in many places.

Section 666.

¶ Item si Feme seisie d certaine terre en fee prent baron, le quel aliena mesme la terre a vn auter en Fee, lalienee lessa mesme la terre al Baron et sa Feme pur terme de lour deux vies, sauant le reuersion al Lessor et a ses heires, en cest cas la Feme est eins en son Remitter, et el est seisie en Fait en son demesne come de Fee, sicome el fuit adeuant, pur ceo que le repriseil del Estate serra adiudge en Ley, le Fait le Baron, et nemy le Fait la Feme, issint nul folly poit estre adiudge en la Feme, que est couert en tiel Case, et en cest case le Lessor nad rien en le Reuersion, pur ceo que la Feme est seisie en fee, &c.

ALso if a woman seised of certaine Land in Fee, taketh Husband, who alieneth the same Land to another in Fee, the Alienee letteth the same Land to the husband and wife for terme of their two liues, sauing the reuersion to the Lessor and to his Heires: In this case the wife is in in her Remitter, and she is seised in Deed in her Demesne as of Fee, as she was before, because the taking back of the Estate shall be adiudged in law the fact of the Husband, and not the fact of the Wife; so no follie can be adiudged in the wife, which is Couert in such Case. And in this Case the Lessor hath nothing in the Reuersion, for that the Wife is seised in Fee, &c.

¶ *La feme est en son Remitter.* **By this it appeareth, That albeit** there be no moities betweene husband and wife, yet this is a Remitter presently, and standeth not vpon the suruiuor of the wife, as some haue thought, for if the Estate gained by intermarriage be a sufficient Estate to worke a Remitter, à fortiori, an Estate made to the husband and wife shall worke a Remitter in the wife. And so it is if Tenant in Tayle infeoffe his Issue being within age, and his wife in Fee, and dieth, this is a Remitter to the Issue presently, by the death of Tenant in Tayle, though some haue thought the contrarie.

31.E.3.26. 29.E.3.43. 41. E.3.Remit.11. 19.E.2.Remit.14.35. Ass.12.38.E.3.24 39.E.3.29.30 41.E.3.17. 46.E.3.20.b. 26.E.3.69. Vi.Sect.676. 11.R.2.Remit.12.44.E.3. 17.

Here also it appeareth, That no foiite in this case can be adiudged in a Feme Couert, for the taking backe of the Estate shall be adiudged in Law the act of the Husband.

The Marques of Winch case, vb. sup.

Note in the case of the Feme Couert, she may be remitted in the life of the Discontinuor, because she hath a present right: but in the case of Tenant in Taile, the Issue cannot bee remitted in the life of the Discontinuor, because the Issue hath no right vntill his decease.

Section 667.

¶ MEs en cē case si le Lessour voile suer Action de wast vers le Baron et sa Feme, pur ceo que le Baron auoit fait Wast, le Baron ne poit barrer le Lessor pur monstre ceo que le reprisel dl estat fait a luy et a son feme, fuit vn Remitter a sa feme, pur ceo que le Baron est estoppe adire ceo que est encounter s̄ feoffment et son reprisel demesne del estate p̄ terme de vie a luy et a sa Feme. Et vncore le Lessor nad vn Reuersion, pur ceo que le Fee simple est en la feme. Et isslint home poit veier vn matter en ceo case, q̄ home serra estoppe per vn matter en fait coment que nul Escripture soit fait per fait indent ou auterment.

BVt in this Case if the Lessor wil sue an Action of Wast against the husband and his Wife, for that the husband hath committed Wast, the husband cannot barre the Lessor by shewing this, That the taking backe of the Estate to him and to his wife, was a Remitter to his wife, because the husband is stopped to say that which is against his owne Feoffement, and taking backe of the Estate for terme of life to him and to his Wife. And yet the Lessor hath no reuersion, for that the Fee simple is in the Wife. And so a man may see one thing in this case, That a man shall bee stopped by matter in Fact, though there bee no Writing by Deede indented, or otherwise.

¶ *Pur ceo que Baron est estoppe a dire, &c.*

¶ *Estoppe* commeth of the French word Estoupe, from whence the English word Stopped: and it is called an Estoppel or Conclusion, because a mans owne Act or acceptance stoppeth or closeth vp his mouth to alledge or plead the truth: And Littletons case heere prooueth this description.

Ls. 2. fo. 4 b. Goddards case. V. Sect. 41. & 693. 695. 679.

Touching Estoppels, (which is an excellent and curious kind of learning) it is to obserued that there be three kind of Estoppels, viz. By matter of Record, By matter in writing, and By matter in Paiis.

(a) By matter of Record, viz. By Letters Patents, Fine, Recouerie, Pleading, taking of Continuance, Confession, Imparlance, Warrant of Attorney, Admittance.

(a) 41. *Ass.* 29. 8. *H.* 4. 7. 8. 22. *Ass* 54. 15. *E.* 3 *Estop.* 239 4. *E.* 3. *ib.* 133.

(b) By matter in writing, as by Deed indented, by making of an Acquittance by Deed indented, or Deed poll, (c) by Defeasance by Deed indented or Deed Poll.

(b) 4. *H.* 41. 8 *H.* 7. 6. 13. *H.* 7 24. 15. *E.* 4. 28. 41 *E.* 3 *Estop.* 12. 12. *R* 2. *ib.* 212.

(c) 8. *R.* 2. *Estop.* 283. 35. *H.* 6. 18. 3. *H.* 6. 16. 16. *H.* 7. 5 3. *H.* 6. 19. 14. *H.* 4. 29.

By matter in Paiis, as by Liuerie, by Entry, by Acceptance of Rent, by Partition, and by Acceptance of an Estate as heire in the case that Littleton putteth, whereof Littleton maketh a special obseruation, that a man shall be estopped by matter in the Countrie, without any writing.

To make the Reader more capable of the learning of Estoppels, these few Rules, amongst others, are to be knowne.

(d) First, That euerie Estoppell ought to be reciprocall, that is to bind both parties; and this is the reason, that regularly a Stranger shall neither take aduantage, nor be bound by the Estoppell, (e) Priuies in Bloud, as the Heire, Priuies in Estate, as the Feoffee, Lessee, &c. Priuies in Law, as the Lords by Escheat: Tenant by the Curtesie, Tenant in Dower, the Incumbent

(d) 33. *H.* 6. 19. 30. 30. *H.* 6. 2 31. *E.* 3. *Estop.* 240. 33. *Ass.* 18. 30. *Ass.* 31. 14. *Ass* 9. 18 *E.* 4. 1

(e) 8. *Ass.* 33. *Br. Fines* 73. 8. *H.* 6. 19 21. *E.* 3. 35. 38. *E.* 3 31. 20. *E.* 3. *Estop.* 187.

Incumbent of a Benefice, and others that come vnder by Act in Law, or in the Post, shall bee bound and take aduantage of Estoppels, and that a Rebutter is a kind of Estoppell.

(f) Secondly, That euerie Estoppell, because it concludeth a man to alledge the truth, must be certaine to euerie intent, and not to be taken by argument or inference.

(g) Thirdly, Euerie Estoppell ought to be a precise affirmation of that which maketh the Estoppell, and not be spoken impersonally, as if it be sayd, Vt dicitur, quia impersonalitas non concludit, nec ligat: impersonalis dicitur, quia sine persona. (h) Neither doth a recitall conclude, because it is no direct affirmation.

(i) Fourthly, A matter alledged that is neither trauersable nor materiall, shall not estoppe.

(k) Fiftly, Regularly a man shall not bee concluded by acceptance or the like, before his Title accrued.

(l) Sixtly, Estoppell against Estoppell doth put the matter at large.

(m) Seuenthly, Matters alledged by way of supposall in Counts, shall not conclude after Non-suit: otherwise it is after iudgement giuen; and after Non-suit, albeit the supposall in the Count shall not conclude, yet the Barre, Title, Replication, or other pleading of either partie, which is precisely alledged, shall conclude after Non-suit, and hereby are the Bookes reconciled.

Eightly, where the veritie is apparant in the same Record, there the aduerse partie shal not be estopped to take aduantage of the truth, for he cannot be estoppad to alledge the truth, when the truth appeareth of Record. (n) If a Fine be leuied without any originall, it is voydable, but not voyd, but if an Originall be brought, and a Retraxit entred, and after that, a Concord is made, or a Fine leuied, this is voyd, in respect the veritie appeareth of Record. (o) An Impropriation is made after the death of an Incumbent, to a Bishop and his Successors, the Bishop by Indenture demiseth the Parsonage for fortie yeares, to begin after the death of the Incumbent, the Deane and Chapiter confirmeth it, the Incumbent dieth, this Demise shall not conclude, for that it appeareth that he had nothing in the Impropriation till after the death of the Incumbent.

(p) Ninthly, where the Record of the Estoppell doth run to the disabilitie or legitimation of the person, there all strangers shall take benefit of that Record, as Outlawrie, Excommengement, Profession, Attainder of Præmunire, of Felonie, &c. Bastardie, Mulitertie, and shall conclude the partie, though they be Strangers to the Record, Vide in Littleton, cap. Villenage, Sect. 196, 197. &c. But of a Record concerning the name of the person, qualitie, or addition, no estranger shall take aduantage, because he shall not be bound by it. But nota Reader, That in case of the Mulitertie prima facie, an Estranger shall take benefit of it, &c. But yet because he may be a Mulier by the Ecclesiasticall Law, and a Bastard by the Common Law, therefore against such a Certificate pleaded, the aduerse partie may alledge the speciall matter, and confesse the Certificate of the Bishop according to the Ecclesiasticall Law, and alledge further the speciall matter according to the Common Law, wherunto the aduerse party must answer, and so are the Bookes that treat of this matter, to be reconciled. But now let vs return to Littleton.

(f) 21.E.4.4. 23.Ass.14. 17.H.6.Estop.273. 18.E.3. 30.7.H.7.6.& 16.
(g) 46.E.3.33. 29.Ass.38. Pl.Com.398.
(h) 35.H.6.33. 46.E.3.12. 49.E.3.14.8.Ass.3.45.Ass.5 3.El.Dy.196. 11.El.ibid.280 9.H.6.60.
(i) 5.E.4.7.8.E.4.19. 10. E.4.12.22 E.4.38.32.Ass.9 35.H.6.20.
(k) 33.H.6.16. 4.E.3.22. 6.H 4.7.31.E.1. Gard.155. F.N.B. 142.E.
(l) 12.H.7.4. 20.H.6.29. 3.H.4.9. 41.E.3.4 11.H 4. 30.
(m) 2.R.3.14.2.R.2. Estoppel.20.40.E.3.21.12.E.4.13 18.E.3.31.35.44.E.3.45. 17.Ass.27.45.E.3.2. 21.H.7.24.5.E.4.7.7.E.4. 19.3.E.4.11.4.E.3.54. 7.E.6.Br.Estop.162.11.H.4 30.30.E.3.21.31.Ass.14.
(n) 37.Ass.17.38.H.6.12. 5.El.Dy.322.
(o) 7.El.Dy.244.
(p) Brall.fo.410.26.Ass 64. 39.Ass.10. 11.H.4.84. 7.H.6.7. 33.Ass.5. 11.E.3. Estop.229.21.E.3.39.19.R 2 Estop.282.3.E.3.ib.23. 33.E.3.Estop.Stath. Lestat. de 9.H.6.ca 11.30.H.6.2. Dodr.& Stud.69. 34.H.6.39 18.E.4.1.b.10.E.4.16.

Sect. 668.

¶ L *A Femepria deste resceiue & soit resceiue.* **Receipt,** Receptio commeth of the Latyne Verbe Recipere, so called because the wife vpon the default of her husband, is receiued as a Feme sole alone, without her husband, to defend her right, and it is also called Defensio iuris: and in this case the wife may bee receiued by the (a) Statute, and yet (b) antient Authors who wrote before the Statute, doe speake of a kind of Receit at the Common Law. The Ciuilians call Receit, Admissionem tertij pro suo interesse, which more properly is resembled to the receit of him in the reuersion or remainder, that is no part to the writ.

20.E.1.Defensio iuris.

(a) W.2.ca.3.
(b) Bract.fo.393. Mir.li.3. cap.Exceptions.

¶ M Es si en action de Waste le baron fait default a le graund distresse, et la feme pria destre receiue et soit receiue el monstra bien tout le matter, et coment el est en son Remitter, et el barrera le Lessor de son Action, &c.

But if in the Action of Waste the Husband make default to the grand Distresse, and the Wife pray to be receiued, and is receiued, shee may well shew the whole matter, and how shee is in her Remitter, and shee shall barre the Lessor of his Action, &c.

Sect.

Sect. 669.

¶ Car en chescun cas lou feme est receiue pur default son baron, el pledera & auera ñ laduantage en plee pledant, come el fuis-soit feme sole, &c. Et coment que lalienee fist le leas al baron & a sa feme, per fait endent, vncore ceo est remitter a la feme. Et auxy coment que lalienee rendist mesm̃ la terre al baron & a sa feme per fine pur terme de lour vies, vncore ceo est vn remitter al feme, pur ceo que feme couert que prent estate per fine, ne serra my examine per les Iustices, &c.

FOr in euery Case where the wife is receiued for default of her husband, shee shall plead and haue the same aduantage in pleading, as shee were a woman sole, &c. and albeit that the alienee made the lease to the husband and wife by deed indented, yet this is a Remitter to the wife. And also albeit the alienee rendreth the same Land to the husband and his wife by fine for tearme of their liues, yet this is a remitter to the wife, becausse a feme couert which takes an estate by fine shall not be examined by the Iustices, &c.

¶ *Come el fuissoit feme sole, &c.*

In this Section foure things are to bee vnderstood.

First when a Feme couert is receiued that she shall plead as if she were sole. And this is regularly true, yet holdeth not in all cases, (c) for if a Feme couert bee receiued in an Assise and plead a Record and false, therefore shee shall not bee adiudged a Misseisor as shee should bee if shee were sole, &c. So if a Feme couert only lenie a fine executorie, and a Scire facias is brought against her and her husband, if shee bee receiued vpon the default of her husband, shee shall barre the Conusee, which if shee had beene sole, she could not doe, and in some other Cases.

(c) 37. Ass. 1.

17. Ass. 17. 29. E. 3. 43. 5. E. 3. Vouch 178.

Secondly, that though the estate taken backe bee by deed indented, yet that shall not hinder the Remitter in case of a Feme couert, or an Infant. Thirdly, that though it be by fine sur render, yet that shall not hinder the Remitter, becausse a Feme couert is not to be examined vpon any fine, but when shee and her husband passe some estate or interest, or releasse her right by a fine of the Lands or Tenements.

¶ *Ne serra my examine per les Iustices, &c.* The examination of a Feme Couert ought to be secret, and the effect is to examine her whether she be content to leuie a fine of such Lands (naming them particularly and distinctly, and the state that passeth by the fine) of her owne voluntarie free will, and not by threats, menaces, or any other compulsarie meanes.

Fourthly, if the husband leuie a fine of his wiues Lands, and the Conusee grant and render the Land to the husband and wife, although the wife bee not partie to the originall nor to the Conusans, and therefore she ought not by the Law to take any present estate but by way of Remainder only, yet here it is proued by Littleton, that the grant and render de facto to the wife in præsenti is not void, for then it could not worke a Remitter, but voidable by Writ of Error, and that auoidable estate doth worke a Remitter.

Trin. 27. Eliz. Inter Owen & Morgan Rot. 276. in Banco Communi.
Lib. 3. fol. 5. the Marquesse of Winchesters Case.
7. E. 3. 64. 13. E. 3. Voucher 219.

Sect. 670.

¶ ET hic nota, que quant alcun chose passera de la feñ que est couert de baron per force dun

AND here note, that when any thing shall passe from the wife which is couert of a husband by

dun fine, ſicome le baron et la feñ feſont vn conuſance de droit a vn auter, &c. ou feſoyent vn grant & render a vn auter, ou releſſent per fine a auter, & ſic de ſimilibus, lou le droit del feñ paſſeroit del feme p force de meſme le fine, en touts tielx caſes la feme ſerra examine deuaunt q̃ la fine ſoit accept pur ceo que tiels fines concluderont tiels feñs couerts a touts iours, &c. Mes lou riens eſt moue en le fine forſque tantſolement que le baron, & la feme preignont eſtate per force de meſme le fine, ceo ne concluder la feme, pur ceo que en tiel cas el iammes ne ſerra my examine, &c.

force of a fine. As if the husband and wife make Conuſance of right to another, &c. or make a grant & render to another, or releaſe by fine vnto another, *& ſic de ſimilibus*, where the right of the wife ſhall paſſe from the wife by force of the ſame fine, in all ſuch caſes the wife ſhall bee examined before that the fine bee taken, becauſe that ſuch fines ſhall conclude ſuch femes couerts for euer. But where nothing is moued in the fine but only that the husband and wife do take an eſtate by force of the ſaid fine, this ſhall not conclude the wife, for that in ſuch caſe ſhee ſhall not bee at all examined, &c.

¶ *Quant aſcun choſe paſſera de la feme couert, &c. per force dun fine, &c.* **And of this opinion is** (d) Littleton **in our Bookes.**

*Therefore if the husband and wife be Tenants in ſpeciall tayle, and they leuie a fine at the Common Law, and after the husband and wife take backe an eſtate to them and their heires in this caſe the eſtate tayle is not barred, and yet against a fine leuied by her ſelfe ſhe cannot be remitted, becauſe thereupon ſhe was examined: but in that caſe if the Land diſcend to her iſſue he ſhall be remitted.

(d) 15.E.4.28. 24.E.3.31. 42.E.3.6. 3.H.6.42. 20.E.3.Fit. Cas in vita 10.
(*) 29.E.3.43. 46.E.3.5.

Section 671.

¶ Item ſi tenant en taile diſcontinua le taile & ad iſſue file, & morust, & la file eſteant de pleine age prent baron, & le diſcontinuee fait vn releas d̃ ceo al baron & a ſa feme pur terme d̃ lour vies, ceo eſt vn Remitter al feme, et la feme eſt eins per force de le taile, Cauſa qua ſupra.

ALſo if tenant in tayle diſcontinue the taile, and hath iſſue a daughter & dieth, & the daughter being of full age taketh husband and the Diſcontinuee make a releaſe of this to the husband & wife for terme of their liues, this is a Remitter to the wife, and the wife is in by force of the Tayle, *Cauſa qua ſupra, &c.*

¶ *Et la feme eſteant de plein age prent baron, &c.* **Here it appeareth** that her full age when ſhe tooke Baron is not materiall, but her couerture at the taking backe of the eſtate. And ſo note a diuerſitie betweene a Remitter and a Diſcent. For if a woman be diſſeiſed, and being of full age taketh husband, and then the Diſſeiſor dieth ſeiſed, this Diſcent ſhall binde the wife, albeit ſhee was couert when the Diſcent was caſt, becauſe ſhee was of full age when ſhee tooke husband, as appeareth before in the Chapter of Diſcents. But albeit the wife that hath an ancient right, and being of full age taketh a husband, and the Diſcontinuee letteth the Land to the husband and wife for their liues, this is a Remitter to the wife. For Remitters to ancient rights are fauoured in Law.

Sect.

Sect. 672.

¶ Item ſi terre ſoit done a le baron et a ſa feme, a auer et tener a eux et a les heirs de lour deux corps engendres, et puis le baron aliena la terre en fee, et repient eſtate a luy et a ſa feme pur terme de lour deux vies, en ceſt cas il eſt remitter en fait a le baron et a ſa feme maugre le baron. Car il ne poit eſtre vn remitter en ceſt cas a la feme, ſinon que ſoit vn remitter a le baron, pur ceo que le baron et ſa feme ſont tout vn meſme perſon en ley, coment que le baron eſt eſtoppe de claymer. Et pur ceo, ceo eſt vn remitter e luy enconter ſon alienation et ſon repriſel demeſne, come eſt dit adeuant.

ALſo if land be giuen to the husband and to his wife, to haue & to hold to them & to the heires of their two bodies begotten, and after the husband alien the land in fee, and take backe an eſtate to him and to his wife for terme of their two liues, in this caſe this is a remitter in deed to the husband and to his wife mauger the husband. For it cannot bee a remitter in this caſe to the wife, vnleſſe it bee a remitter to the husband, becauſe the husband and wife are all one ſame perſon in Law, though the husband be ſtopped to claime it, and therefore this is a remitter againſt his owne alienation and repriſel, as is ſaid before.

¶ HEre it appeareth that the husband againſt his owne alienation if hee had taken the eſtate to him alone could not haue been remitted. But when the eſtate is made to the husband & wife, albeit they be but one perſon in Law, and no moyties betweene them, yet for that the wife cannot be remitted in this caſe, vnleſſe the husband be remitted alſo, and for that remitters, as hath beene often ſaid, are fauoured in Law becauſe thereby the more antient and better rights are reſtored againe, therefore in this caſe in iudgement of Law both husband and wife are remitted, which is worthy of great obſeruation.

Sect. 673.

¶ Item ſi terre ſoit done a vn feme en taile, le remainder a vn auter en taile, le remainder a le tierce en taile, le remainder al quart en fee, et la feme prent baron, et le baron diſcontinua la terre en fee, p cel diſcontinuance touts les remainders ſont diſcontinues. Car ſi la feme deuiaſt ſans iſſue, ceux en le remainder naueront aſcun remedie forſque de ſuer lour briefes de Formedon en le remainder quant

ALſo if land bee giuen to a woman in taile, the remainder to another in taile, the remainder to the third in taile, the remainder to the fourth in fee, and the woman taketh husband, and the husband diſcontinue the land in fee, by this Diſcontinuance all the remainders are diſcontinued, for if the wife die without iſſue, they in the remainder ſhall not haue any remedie but to ſue their writs of *Formedon* in the remainder, when

quant il autent a lour temps. Mes ſi apres tiel diſcontinuance, eſtate ſoit fait a le baron et ſa feme pur terme de lour deux vies, ou pur terme dauter vie, ou auter eſtate, &c. pur ceo que ceo eſt vn remitter al feme, ceo eſt auxy vn remitter a touts ceux en le remainder. Car apres ceo que la feme que eſt en ſon remitter mozuſt ſans iſſue, ceux en le remainder poyent enter, &c. ſans aſcun action ſuer, &c. En meſme le maner eſt de ceux que ount la reuerſion apres tiel tailes.

it comes to their times. But if after ſuch diſcontinuance, an eſtate be made to the husband and wife for terme of their two liues, or for terme of another mans life, or other eſtate, &c. for that this is a remitter to the wife, this is alſo a remitter to all them in the remainder. For after that that the wife which is in her remitter be dead without iſſue, they in the remainder may enter, &c. without any action ſuing, &c. In the ſame manner is it of thoſe which haue the reuerſion after ſuch entailes.

41.E.3.17. 41.Aſſ.1. 36.Aſſ.p.4.

LIttleton hauing ſpoken of Remitters to the iſſue in taile who is priuie in blood, and to the wife who is priuie in perſon, now he ſpeaketh of Remitters to them in reuerſion or remainder expectant vpon an eſtate taile who are priuie in eſtate. And this taile proueth that the wife is remitted preſently, for the equity of the Law requireth that as the diſcontinuance of the eſtate in taile is a diſcontinuance of the reuerſion or remainder, ſo, that the Remitter to the eſtate in taile ſhould be a Remitter to them in the reuerſion or remainder.

44.Aſſ.p.15. 44 E.3.30.

Tenant for life the remainder to A. in taile, the remainder to B in fee, Tenant for life is diſſeiſed, a collaterall Anceſtor of A. releaſeth with warrantie and dyeth, whereby the eſtate taile is barred, the Tenant for life re-entreth, the Diſſeiſor hath an eſtate in fee ſimple determinable vpon the ſtate taile, and the remainder of B. is reueſted in him, and ſo note in this caſe the eſtate for life and the remainder in fee are reueſted and remitted, and an eſtate of inheritance left in the Diſſeiſor. If a Fine be leuied ſur grant & render to one for life or in taile, the remainder in fee, if Tenant for life or in taile execute the eſtate for life or in taile, this is an execution of the remainder.

30.E.3.Aid.29.

A gift in taile is made to B. the remainder to C. in fee, B. diſcontinueth and taketh backe an eſtate in taile, the remainder in fee to the King by deed inrolled, Tenant in taile dieth, his iſſue is remitted, and conſequently the remainder as Littleton here ſaith, and the diuerſitie is (a) betweene an act in Law, for that may deueſt an eſtate out of the King, and a tortious act, or entrie, or a falſe and a feyned recouery againſt Tenant for life or in taile which ſhall neuer deueſt any eſtate, remainder, or reuerſion out of the King. (b) But a recouery by good title againſt Tenant for life or in taile where the remainder is to the King by defeaſible title ſhall deueſt the remainder out of the King, and reſtore and remit the right owners.

Vid.Pl.Com.489. Nichols caſe & 10.553. in Walſinghams caſe.
27.Eliz.Dier 344.
25.E.3.48.tit.Reſceit 28.
49.E.3.16.
(a) Seigneur Staffords caſe, Lib.8.fo.76.b.
(b) Cholmeleys caſe, lib.2.53.
7.R.2.Aide le Roy, 61.
22.E.3.7.

Sect.674.675.

FEint & faux action. 1. Actio ficta & falſa, But hereof Littleton ſpeaketh himſelfe in this Chapter.

Quod ei deforceat, is a Writ that is giuen by (c) Statute to any Tenant for life or in taile vpon a Recouery by default againſt them in a Præcipe, and lyeth againſt the

(c) W.2.cap.4.

Item ſi hom leſſa vn meaſe a vn feme pur terme de ſa vie, ſauant l'reuerſion al leſſour, et puis vn ſuiſt vn feint et faux action enuers la feme, et recoueraſt le meaſe enuers luy per default, iſſint que la

ALſo if a man lett a houſe to a woman for terme of her life, ſauing the reuerſion to the Leſſor, and after one ſue a feyned and falſe action againſt the woman, and recouereth the houſe againſt her by default, ſo as the

la feme puit auer enuers luy vn Quod ei deforceat, ſolonque le Statute de Weſtm 2. ore le reuerſion le Leſſor eſt diſcontinue, iſſint que il ne poit auer aſcun action de waſt. Mes en ceſt caſe ſi la feme prent baron, et celuy que recoueraſt leſſa le meaſe al baron et a ſa feme pur terme de lour deux vyes, la feme eſt eins en ſon remitter per force del primer leaſe.

woman may haue against him a *Quod ei deforceat*, according to the Statute of Weſtm. 2. now the reuerſion of the Leſſor is diſcontinued, ſo that he cannot haue any action of waſt. But in this caſe if the woman take husband, and hee which recouereth lett the houſe to the husband & his wife for terme of their two liues the wife is in her Remitter by force of the firſt Leaſe.

Sect. 675.

CEt ſi le baron et la feme font waſt, le primer leſſor auera enuers eux bē de waſt, pur ceo que entant que la feme eſt en ſon remitter, il eſt remiſe a ſon reuerſion. Mes ſemble en ceſt cas ſi celuy que recoueraſt per l' faux action, voile porter auter briefe de waſt enuers le baron & ſa feme, le baron nad auter remedie enuers luy, mes de faire default a la graund diſtres, &c. et cauſer la feme deſtre receiue, et de pleder cel matter enuers le ſecōd leſſor, et monſtrer coment laction per que il recoueraſt fuit faux & feint ē ley, &c. iſſint l' fēe poit luy barrer, &c.

AND if the husband and wife make waſt, the firſt Leſſor ſhall haue a writ of waſt againſt them, for that inaſmuch as the wife is in her remitter, he is remitted to his reuerſion. But it ſeemeth in this caſe if hee that recouereth by the falſe action will bring another writ of waſte againſt the husband & his wife, the husband hath no other remedy againſt him, but to make default to the grand diſtreſſe, &c. and cauſe the wife to be receiued, and to plead this matter againſt the ſecond Leſſor, and ſhew how the action wherby he recouered was falſe & fained in law, &c. ſo the wife may barre him.

recoueror and his heires in which caſe the particular Tenant was without remedy at the Common Law, becauſe hee could not haue a writ of right. And it is called a Quod ei deforceat, for that they are part of the words of that writ, viz. Præcipe A. quod, &c. reddat B. vnum meſuagium, &c. quod clamat eſſe ius & maritagium ſuum, & quod idem A. ei iniuſte deforceat. *Bracton lib. 4. 367. Fleta, lib. 5. c. p. 22. & lib. 6. cap. 14. 7. E. 3. 62. F.N.B 155.*

¶ *Recoueraſt &c. per default.* There hath beene a queſtion in our bookes vpon theſe words (By default) as for example, whether a recouery had by default in an action of waſte againſt Tenant in Dower, or by the Curteſie, a Quod ei deforceat lyeth by the ſaid Statute. And diuers hold opinion, that in that caſe no Quod ei deforceat lyeth, for that iudgement is not giuen, for notwithſtanding the default, there goeth out a writ to enquire De vaſto facto, & quod vaſtum prædictum A. (le defendant) fecit. So as the Defendant may giue euidence, and the Iurors may finde for the Defendant, that no waſte was done: As in the Aſſiſe albeit it bee awarded by Default, yet may the Tenant giue euidence, and the Recognitors of the Aſſiſe may finde for the Tenant, and therefore in thoſe caſes, the Defendant or Tenant Non amittit per defaltam, as the Statute and Littleton ſpeaketh, and they cite F.N.B. in the point. *W. 2. ca. 4. F.N.B. fo. 155. E.*

Secondly, they hold that a Quod ei deforceat lyeth where the Tenant can haue no remedie by attaint, but in this caſe (ſay they) an attaint doth lye. *2. H. 4. 2. 21. H. 6. 56. 41. E. 3. 8. 3. H. 6. 29. 22. E. 3. 19.*

Thirdly, they hold, that in an Action of waſte although

though it be brought against a Tenant in Dower or Tenant by the Curtesie that haue a freehold, yet the dammages are the principall, for they were recouerable against Tenant in Dower and by the Curtesie by the Common Law, and the Statute of Gloceſter gaue the place wasted but for a penaltie, ſo as the nature of the Action (ſay they) remaineth ſtill to bee perſonall, for that the dammages are the principall; (d) and in proofe hereof they cite diuers Authorities in Law. And if two bring an Action of Waſt, the releaſe of one of them is a good bar againſt the other, (e) and ſo reſolued by the whole Court; which proueth (ſay they) that the dammages are the principall, for if the Land were the principall, the releaſe of one of them ſhould not barre the other, no more then in an Aſſiſe, a Writ of Ward, an Eiectione firmæ, &c.

(d) 34.H.6.7.40.E.3.37. & 38.E.3.

(e) 9.H.5.15.

30.H.6.tit.Bar.59.

Laſtly, they ſay, That in Actions where dammages are to be recouered, and the land is the Principall, the Demandant neuer counteth to dammages, and yet ſhall recouer them: but in an Action of Waſt the Plaintife counteth to his dammage, and if the dammages be the Principall, then clearely no Quod ei deforceat lieth.

Others doe hold the contraris; and as to the firſt they ſay, That albeit that in the Writ of Waſt iudgement is not onely giuen vpon the default, yet the default is the principall, and the cauſe of awarding of the Writ to enquire of the Waſt as an incident thereunto: and the Law alwayes hath reſpect to the firſt and principall cauſe, and therefore vpon ſuch a Recouerie (*) a Writ of Deceit lieth, and that Writ lieth not but where the Recouerie is by default. So in an Action of Waſt againſt the huſband and wife, vpon the default of the huſband the wife ſhal be receiued, and yet the Statute there ſpeaketh alſo, per defaltam. So vpon ſuch a recouerie in Waſt againſt the Baron and Feme by default, the Wife ſhall haue a Cui in vita by the Statute, and it ſpeaketh where the Recouerie is per defaltam. And albeit the Defendant may giue in euidence, if he knoweth it, yet when he makes default the Law preſumeth hee knoweth not of it, and it may be that he in truth knew not of it; and therefore it is reaſon, that ſeeing the Statute, that is a beneficiall Statute, hath giuen it him, that he be admitted to his Quod ei deforceat, in which Writ the truth and right ſhall be tried. And ſo it is of a recouerie by default in an Aſſiſe, albeit the Recognitors of the Aſſiſe giue a verdict, a Quod ei deforceat lieth. And all this as to this poynt was reſolued by the whole Court of Common Pleas, and ſo the doubt in 41.E.3.8. well reſolued. Note, if Tenant for life make default after default, and he in the reuerſion is receiued and plead to Iſſue, and it is found by verdict for the Demandant, the default and the verdict are cauſes of the Iudgement, and yet the Tenant ſhall haue a Quod ei deforceat.

(*) 17.E.3.58. 29.E.3.42. F.N.B.98.b.12.H.4.4. 19.E.2.Diſcett 56. W.2.ca.3.3.H.4.fo.1.

W.2.ca.3.9.E.4.16.

41.E.3.8.b.2.H.4.2.21.H.6 56. 44.E.3.42. br.tit.Quod ei deforc.4. Paſch.33.El.Rot. 1125. inter Ed Elmer & El. ſa feme, ten. en Dower. demandants, & Wil. Thacker ten. in Quod ei deforceat.

As to the ſecond obiection, That the Defendant may haue an Attaint, Firſt it was vtterly denied of the other part, (f) that an Attaint did lie in this caſe, for though it be taken by the Oath of twelue men, yet it is but an Enqueſt of Office, whereupon no Attaint did lie on either partie, as vpon an enquirie of Colluſion, although it be by one Iurie, nor vpon a Verdict in a Quale ius. Secondly, Admitting that an Attaint did lie in that caſe, yet it followeth not ex Conſequenti, that a Quod ei deforceat did not lie, (g) for if an Aſſiſe be taken by default, a Quod ei deforceat doth lie, and yet the partie may haue an Attaint, for this is no Enqueſt of Office, but a Recognition by the Recognitors of an Aſſiſe, who were returned the firſt day, and not returned vpon the awarding of the Aſſiſe by default. And as to the ſecond Obiection, of this opinion was the whole Court in Edward Elmers caſe aboue mentioned. As to the third Obiecton, That the dammages ſhould bee the principall, becauſe they were at the Common Law, that is an argument (ſay the other ſide) that they are more antient, but not that they are more principall, and treble dammages were not at the Common Law, (for the Common Law neuer giueth more dammage than the loſſe amounteth vnto) but are giuen by the Statute of Gloceſter, but the place wasted is worthier being in the Realtie, than dammages that be in the perſonaltie, Et omne maius dignum trahit ad ſe minus dignum, quamuis minus dignum ſit antiquius, & à digniori debet fieri denominatio. And it is confeſſed, That in an Action of waſt againſt Tenant for life, or for yeares, the place waſted is the principall, becauſe the Statute of Gloceſter doth giue the place waſted and treble dammages at one time; for no prohibition or Action of waſt lay againſt them at the Common Law, and in an Action of waſt, if the Defendant confeſſe the Action, the Plaintife may haue iudgement for the place waſted, and releaſe the dammages, which proueth (and ſo Fitzherbert collecteth) that the dammages are not the principall, for a man ſhall neuer releaſe the principall, and haue iudgement of the acceſſories: and an Action of waſt againſt Tenant for life, is as reall as an Action againſt Tenant in Dower. And as to the caſe of 9.H.5. cited on the other ſide, it was anſwered that it was an Action in the Tenuit, which is onely in the perſonaltie, and then the Releaſe of the one doth bar both, neither could ſummons and ſeuerance lie in that caſe, (h) but in an Action of waſt (in the Tenet) either againſt Tenant for life or for yeares, the releaſe of the one doth not barre the other, and in both theſe caſes ſummons and ſeuerance doth lie, and this poynt was alſo reſolued accordingly in Edward Elmers Caſe. But when theſe three poynts were reſolued by the Court for the Demandant, then the Counſel of the Tenant moued in arreſt of iudgment another point,

(f) 33.E.3.Ad ei deforc.Pl. vlt. F.N.B.156. V.Flet.li.5.ca.21.48.E.3.19 40.Aſſ.23.33.H.6.25. 39.H.6.1.F.N.B 107.

(g) 17.E.2.Attaint 69. 21.H.6.56. 34.H.6.12.

34.H.6.7.Waſt.50.

(h) 6.E.3.47. 48.E.3.19.

viz.

viz. That the iudgement was giuen vpon a Nihil dicit, which is alwayes after apparance, and not per defaltam, and thereupon iudgement was stayed.

But to returne to Littleton. Here he openeth a secret of Law, for the cause of this remitter is, for that the Tenant for life in this case might haue a Quod ei deforceat, for so Littleton sayth. Issint que il poet auer Quod ei deforceat: Now it appeareth by our Bookes, That the Tenant for life at the Common Law was remediesse, because he could not haue (as hath beene sayd) a writ of Right, and consequently the Feme couert in this case could not bee remitted by the taking of an Estate to her husband and her, because her right was remediesse, and could haue no Action. But when an Act of Parliament or a Custome doth alter the reason and cause thereof, thereby the Common Law it selfe is altered, if the Act of Parliament and Custome be pursued, for Alterata causa & ratione legis, alteratur & lex, & cessante causa seu ratione legis cessat & lex: as in this case the Statute of W.2 giuing remedie to this Feme Tenant for life, in this it giueth her abilitie to bee remitted, because her right is not now remediesse, but she hath an Action to recouer it.

Vide for the Case vpon this ground. 14 H.7.11. 9 Eliz. 27.H.8.4.b. Asid.35.H.6. Gard.72.22.E.3.5. 9 Wiles Customs. Li.5 fo.86. Iustice Windhams case, a. & b.

And Littleton warily putteth his case, That the recouerie was had against the Feme while she was sole, for there was a time when it was a question, whither a Recouerie being had by default against the husband and wife, (the wife being Tenant for life) the sayd Statute gaue a Quod ei deforceat to the husband and wife, for that the Statute gaue it against tenant in Dower and Tenant for life, &c. and here the husband is not Tenant for life, but seised in the right of his wife, and therefore out of the Statute: and of this opinion is one (g) Booke, but (apices iuris non sunt iura, & parum differunt quæ re concordant) the contrarie hath beene adiudged, and so that poynt is now in peace: and the like in case of receit for him in reuersion. But if the husband and wife lose by default, & the husband die, the wife shall not haue a Quod ei deforceat, for a Cui in vita is giuen to her in that case by a former Statute, viz. W.2. cap.3. These things are worthie of due obseruation, and poynts of excellent learning; and Littleton in our Bookes speakes of another kind of Quod ei deforceat at the Common Law, vpon a Disseisin, which you may read. But now let vs heare him in his Booke.

(g) 4.E.3.38.33.E.3. Annow.y 255. 5.E.3.4.33.E.3. Anow 255 F.N.B.155.a 9.E.1.5.2.E.4.13. F.N.B. 156.C. 33.H.6.46.2 E.4.11. 19.E.4.2.

Le reuersion est discontinue, issint que il ne poet auer Action de Waste.

Here it appeareth, That when the Reuersion is deuested, the Lessor cannot haue an Action of Waste, because the writ is, That the Lessee did waste ad exhæredationem of the Lessor, and that Inheritance must continue at the time of the Action brought: And it is to bee obserued, That in an Action of Waste brought by the Lessor against the Lessee, the Lessee in respect of the priuitie cannot plead generally, Riens en le Reuersion, viz. (h) That the Lessor hath nothing in the Reuersion, but he must shew how and by what meanes the reuersion is deuested out of him: and this holdeth (as hath beene sayd) betweene the Lessor and the Lessee; but if the Grantee of a Reuersion bringeth an Action of waste, the Lessee may plead generally, That hee hath nothing in the reuersion. And yet in some speciall cases an Action of waste shall lie, albeit the Lessor had nothing in the Reuersion at the time of the waste done. As if Tenant for life make a Feoffement in Fee vpon condition, and waste is done, and after the Lessee re-enter for the condition broken, In this case the Lessor shall haue an Action of waste. And so if a Bishop make a Lease for life or yeres, & the Bishop die, the lessee, the Sea being voyd, doth waste, the successor shall haue an Action of waste. So if Lessee for life be disseised, and waste is done, the Lessee re-enter, an Action of waste shall be maintained against the Lessee, and so in like cases: and yet in none of these cases the Plaintife in the Action of waste had any thing in the Reuersion at the time of the waste made, but these especiall cases haue their seuerall and especiall reasons, as the learned Reader will easily find out.

45.E.3.21 44.E.3.34.35. F.N.B.60.23.H.8.tit.Waste. Br.138.

(h) 46.E.3.20.8.H.6.13. 30.H.6.7.

Here note, That albeit the Action be false and feigned, yet is the recouerie so much respected in Law, as it worketh a Discontinuance. (i) But if Tenant for life suffer a common Recouerie, or any other Recouerie by couine and consent betweene the Tenant for life and the Recoueror, this is a forfeiture of his estate, and he in the Reuersion may presently enter for the forfeiture. Since our Author wrote, the statute of 14.El.ca.8. hath bin made concerning this matter, which is to be considered, (k) and hath beene well construed and expounded, and needs not here to be repeated.

(i) 5.Aff pl.3. 5.E.3.Entre Cong 42.15 F.3.Ass 95. 41 E.3 18 9 Finchden. 22 E.3.1.b. Li.1.fo.15. Sir Wil Pelhams case. 14.El.ca.8.

(k) Li.3 fo.60. Li.1.fo.15.

And it is to be obserued, That although the Discontinuance groweth by matter of Record, yet the Remitter may be wrought by matter in Paijs: And of the reasons of these two Sections sufficient hath beene sayd before.

Sect.

Sect. 676.

¶ Item si le baron discontinua le terre de sa feme, et puis repriſt estate a luy & a sa feme, & al tierce person pur term̃ de lour vies, ou en fee, ceo nest vn remitter a la feme, forsque quant a la moity, et pur lauter moity el couient aprés la mort son baron de suer vn briefe de Cui in vita.

ALso if the husband discontinue the land of his wife, and after taketh backe an estate to him and to his wife, & to a third person for terme of their liues, or in fee, this is no remitter to the wife, but as to the moity, and for the other moity she must after the death of her husbād sue a writ of *Cui in vita*

44 E.3.17. 44. Ass.2. 43. Ass.3. Vid. Sect.666.

¶ *Ceo nest remitter forsque quant al moity, &c.* Albeit there is Authority in our bookes to the contrary, yet the Law is taken, as Littleton here holdeth it; and as before it appeareth in the like case in this Chapter, and for the reason therein expressed.

Section 677.

¶ *Et puis le baron reuient & agrea, &c.* In this case the estate is in the Feme Court presently by the liuery before any agreement by the husband and of this opinion is Littleton in our Bookes.

15.4.1.b. 7.H.4.17. 1.H.7.16.b. 39.E.3.30. 27.H.8.24.

¶ *Ala ouster le mere.* If hee had beene within the Realme, it doth not alter the case.

¶ *Quære en ceste case si le baron, &c.* Here is a question moued by Littleton whether the disagreement of the Husband shall ouste the wife of her Remitter. And it seemeth that the disagreement shall not deuest the Remitter: First, because the state made to the wife which wrought the Remitter is vanished and wholy defeated, and therefore no disagreement of the husband can deuest the state gained by the lease, which by the Remitter was deuested before.

Secondly, for that the Law hauing once restored her ancient and better right will not suffer the disagreement of the husband to deuest it out of her, and to reuiue the Dis-

¶ Item si le baron discõtinue la teñ sa feme, et ala ouster le mere, et le discontinuee lessa mesme la terre al feñ pur term̃ de sa vie, & liuer a luy seisin, & puis le baron reuyent, & agreea a cel liuerie de seisin, c̃ est vn remitter a la feme, & vncore si la feme fuissoit sole al temps de le leas fait a luy, ceo ne serroit a luy vn remitter. Mes entant que el fuit couert de baron al temps de la leas, & de le liuery de seisin fait a luy, coment que el prist solement le liuery de seisin, ceo fuit vn Remitter a luy, pur ceo que feme couert serra adiudge

ALso if the husband discontinue the land of his wife, and goeth beyond sea, and the Discontinuee let the same Land to the wife for tearme of her life, and deliuer to her seisin, and after the husband commeth backe, and agreeth to this Liuery of seisin, this is a Remitter to the Wife, and yet, if the Wife had beene sole at the time of the lease made to her, this should not bee to her a Remitter, but in as much as she was couert baron at the time of the Lease, and liuery of seisin made vnto her, albeit shee taketh only the liuery of seisin, this was a Remitter

ſcome

ſicome enfant deins age en tiel cas, &c. Quære en ceſt cas ſi l' barõ quant il reuiẽt, voil diſagree a l' leas & liuery de ſeiſin fait a ſon feme en ſon abſence, ſi ceo ouſtera ſon feme de ſon Remitter, ou nemy, &c. abſence, if this ſhall Remitter, or not, &c.

to her becauſe a Feme couert ſhall bee adiudged as an Infant within age in ſuch a caſe, &c. *Quære* in this caſe if the Husband when hee comes backe will diſagree to the leaſe and liuery of ſeiſin made to his wife in his ouſte his wife of her

continuance and reueſt the wrongfull eſtate in the Diſcontinuee.

Thirdly, for that Remitters tending to the aduancement of ancient Rights are fauoured in Law. 41.E.3.18.

And ſo it is for the ſame cauſes if the wife ſuruiue her husband ſhe cannot claime in by the purchaſe made during the couerture but the Law adiudgeth her in her better right. But if both eſtates be watueable, there albeit the wife prima facie is remitted, yet after the deceaſe of her husband, ſhee may elect which of the eſtates ſhee will. As if Lands bee giuen to the husband and wife and their heires, the husband make a feoffment in fee, the feoffee giueth the Land to the husband and wife and the heires of their two bodies, the husband dieth. In this caſe the wife may elect which of the eſtates ſhe will, for both eſtates are watueable, and her time of election and power of wayuer accrewed to her firſt after the deceaſe of her husband. If Lands bee giuen to a man and the heires females of his bodie, and hee maketh a feoffment in fee, and take backe an eſtate to him and his heires, and dieth hauing iſſue a daughter leauing his wife groſſement enſeint with a ſonne and dieth, the daughter is remitted, and albeit the Sonne be afterward borne, hee ſhall not deueſt the Remitter. 18.Eliz.Dier 351.

Sect. 678.

Item ſi le baron diſcontinua les tenements ſon feme, & le diſcõtinuee eſt diſſeiſie, & puis le diſſeiſour leſſa meſmes les tenements a l' baron & a ſon feñ pur terñ de vie, ceo eſt vn remitter a la feme. Mes ſi le baron et ſon feme fueront de couin & conſent que l' diſſeiſin doit eſte fait donques il neſt Remitter a ſon feñ pur ceo que el eſt diſſeiſereſſe: Mes ſi l' baron fuit de couin & conſent a le diſſeiſin, et nemy la feme, donqz

ALſo if the Husband diſcontinue the Lands of his wife, and the diſcontinuee is diſſeiſed, and after the Diſſeiſor letteth the ſame lands to the husband and Wife for tearme of life, this is a Remitter to the wife. But if the husband & his Wife were of couin and conſent that the diſſeiſin ſhould be made, then it is no remitter to his Wife becauſe ſhe is a Diſſeiſereſſe. But if the husband were of couin & conſent to the Diſſeiſin, and not the Wife

ET puis le diſſeiſor leſſa meſme les tenements, &c. Note ſo much are remitters fauoured in law, that the ſtate made by the Diſſeiſor (which commeth to the Land by wrong, and vpon whom the entry of the Diſcontinuee is lawfull) doth remit the wife, and deueſteth all out of the Diſcontinuee, albeit hee hath a Warrantie of the Land. 18.E.4.2.b.

Mes ſi le baron & feme fuer' de couin & conſent, &c. Here it appeareth that couin and conſent of the husband and wife doth hinder the remitter of the wife, for couine and conſent in many caſes to doe a wrong doth choake a meere right, and the ill manner doth make a good matter vnlawfull. 18.E.4, vbi ſupra.

Couin. Couina commeth of the French word Couvine, & is a ſecret aſſent by- (t) Plowm.546. in Wimbiſhes caſe.

determined in the hearts of two or more to the defrauding and prejudice of another.

44.E.3 46. 11.H.4.60. 44.Ass.29. 19.H.8.12. 18.H.8.5. 11.E.4.2. 7.H.7.11.

A woman is lawfully intitled to haue dower, and shee is of counte and consent, that

tiel leas fait al feme est vn remitter, pur ceo que nul default fuit en la feme.

then such Lease made to the wife is a Remitter, for that no default was in the wife.

one shall disseise the Tenant of the Land against whom shee may recouer her lawfull Dower all which is done accordingly, the Tenant may lawfully enter vpon her, and auoid the recouery in respect of the counte. But if a Disseisor, Intrudor, or Abator doe endow a woman that hath lawfull title of Dower, this is good, and shall bind him that right hath, if there were no such counte or consent before the Disseisin, Abatement, or Intrusion.

41.Ass.p.28. 25.Ass.pl. 27.Ass.74. 15.E.4.4 a. 12. Ass.p.20.

And so it is in all cases where a man hath a rightfull and iust cause of Action, yet if he of counte and consent doe raise vp a Tenant by wrong against whom he may recouer, the counte doth suffocate the right, so as the recouery though it be vpon a good title shall not bind, or restore the demandant to his right.

11.E.4.2. 15.E.4 23. 14.H.8.13. 33.H.6.5. 12.E.4.21.b.

If Tenant in tayle and his issue disseise the discontinuee to the vse of the Father, and the Father dieth, and the Land discendeth to the issue, he is not remitted against the Discontinuee in respect he was priuy and partie to the wrong, but in respect of all others he is remitted, and shall deraigne the first warrantie. And so note a man may be remitted against one, and not against another.

A. and B. Ioyntenants be intitled to a reall Action against the heire of the Disseisor, A. causes the heire to be disseised, against whom A. and B. recouer and sue execution. B. is remitted for that he was not partie to the counte, and shall hold in common with A, but A. is not remitted for the reason that Littleton here sheweth.

F.N.B.179.g. 12.E.4.9. 35.Ass.5. 44.E.3.9.23.13.Ass.1. Temps E.1.Waste 128. 16.Ass.p.7. 21.E.4.53. 21.H.7.35. 3.H.4.17.

¶ *Pur ceo que el est disseisoresse.* Nota, **It is regularly true that a** Feme Couert cannot be a Disseisoress by her commandement or procurement precedent, nor by her assent or agreement subsequent, but by her actuall entry or proper act she may bee a Disseisoresse. And therefore some doe hold that Littleton must be intended that the husband and wife were present when the Disseisin was done, and others doe hold that Littleton is good Law albeit shee were absent, for that if her procurement or agreement bee to doe a wrong to cause a Remitter vnto her in this speciall case she shall faile of her end, and remitted she shall not bee, but in this speciall case she shall be holden as a Disseisoresse by her counte and consent quatenus to hinder the Remitter. And here it appeareth, that albeit the husband bee of counte and consent, &c. yet if the wife were not of counte and consent also, she shall be remitted, because as Littleton saith, there was no default in the wife.

Sect. 679.

¶ **Item si tiel discontinuee fesoit estate de franktenemēt al baron & a son feme per fait endent. sur condition, &c. reseruant al discontinuee vn certaine rent, & pur default de payment vn reentry, & pur ceo que le rent est aderere, le discontinuee enter, donques de cel entrie le feme auera vn Assise de** Nouel disseisin, **apres la mort son baron enuers le discontinuee, pur ceo que le condition fuit tout oustrement aniente, entant que la feme fuit en ẽ remitter, vncore le baron ouesque sa feme**

ALso if such discontinuee make an estate of freehold to the husband and wife by Deed indented vpon condition, &c. reseruing to the discontinuee a certain rent and for default of payment a re-entrie, and for that the rent is behind the discontinuee enter, then for this entry the wife shall haue an Assise of *Nouel disseisin*, after the death of her Husband against the Discontinuee, because the condition was altogether taken away, inasmuch as the Wife was in her Remitter, yet the husband with his wife can-

feme ne poient auer Assise, pur ceo que le baron est estoppe, &c.

not haue an Assise becausse the husband is estopped,&c.

IT is hereby to be obserued, that the wife is presently remitted, and that the conditions and rents and all other things annexed to or reserued vpon the state (that is vanished and defeated by the Remitter) are defeated also.

Pl. Com. in Amy Townesheds Case. 12. R. 2. tit. Remitter 12.

Sect. 680. & 681.

ITem si le baron discontinua les tenements sa feme, & reprist estate a luy pur terme de sa vie, le remainder apres son decease a sa feme pur terme de sa vie, en cest cas ceo nest vn remitter a la feme durant la vie le baron, pur ceo que durant la vie le baron, la feme nad riens en le franktenement. Mes si en ceo cas la feme suruesquist le baron, ceo est vn remitter a la feme, pur ceo que vn franktenement en ley est iect sur luy maugre le soen. Et entant que el ne poit auer action enuers nul auter person, & enuers luy mesme el ne poit auer action, pur ceo el est en s Remitter. Car en cest cas, coment que la feme ne entra pas en les tenements, vncore vn estrange que ad cause de auer action, poit suer son action enuers la feme de mesmes les tenements, pur ceo que el est tenant en ley, coment que el ne soit tenant en fait.

ALso if the Husband discontinue the tenements of his wife, and take back an estate to him for life, the remaynder after his decease to his wife for tearme of her life, in this case this is no Remitter to the Wife during the life of the husband, for that during the life of the Husband the Wife hath nothing in the freehold. But if in this case the wife suruiueth the Husband, this is a Remitter to the Wife becausse a freehold in Law is cast vpon her against her will. And in as much as shee cannot haue an action against any person, and against her selfe shee cannot haue an Action, therefore shee is in her remitter. For in this case although the Wife doth not enter into the tenements, yet a stranger which hath cause to haue an Action, may sue his Action against the Wife for the same tenements, becausse shee is Tenant in Law, albeit that she bee not Tenant in Deed.

Sect. 681.

CAr t de franktenement en fait est celuy, q̃ sil soit disseisie de franktenement, il poit auer Assise. Mes tenant de franktenement en ley deuant son entre en fait, nauera my assise. Et si home soit seisie de certeine terre, et ad issue fits quel prent feme

FOr tenant of freehold in deed is he, who, if hee bee disseised of the freehold, may haue an Assise, but tenant of freehold in Law before his entrie in deed, shall not haue an Assise. And if a man bee seised of certaine Land, and hath issue a sonne who taketh wife, and

feme, & le pier deuie ſeiſie, et puis le fits deuie deuant aſcun entrie fait per luy en la terre, le feme le fits ſerra endowe en le terre, et vncore il nauoit nul franktenement en fait, mes il auoit vn fee & franktenement en ley. Et iſſint nota, que Præcipe quod reddat poit auxybien eſtre maintenus enuers celuy que ad franktenement en ley, ſicome enuers celuy que ad le franktenement en fait.

the father dieth ſeiſed, and after the ſonne dies before any entrie made by him into the land, the wife of the ſonne ſhall be endowed in the land, and yet he had no freehold in Deed, but he had a fee and freehold in Lawe. And ſo note, that a *Præcipe quod reddat* may as well bee maintained againſt him that hath the freehold in Law, as againſt him that hath the freehold in deed.

18.H.8.3.

Vid. Sect.447.
Bracton lib.4.fol.206.237.
Britton 83.b.
Flet. lib.3.cap.15.

THere fiue things are to be obſerued; Firſt, that a remainder expectant vpon an eſtate for life worketh no Remitter, but when it fall in poſſeſſion: for before his time he can haue no action, and no free hold is in him. Secondly, though the woman might waiue the remainder, yet becauſe ſhe is preſently by the death of the husband Tenant to the Præcipe, it is within the rule of Remitter, and her power of waiuer is not materiall. Thirdly, that a freehold in Law being caſt vpon the woman by act of Law without any thing done or aſſented to by her, doth remit her, albeit ſhe be then ſole and of full age. Fourthly, that a Præcipe lyeth againſt one that hath but a freehold in Law. Fiftly, that a woman ſhall bee endowed where the husband hath the inheritance and but a freehold in Law, as hath beene ſaid in the Chapter of Dower.

Sect. 682.

Item ſi tenant en taile ad iſſue deux fits de pleine age, et il leſſa la terre taile al eigne fits pur terme de ſa vie, le remainder al fits puiſne pur term̃ de ſa vie, et puis le tenant en taile mozuſt, en ceſt cas leigne fits neſt pas en ſon Remitter, pur ceo que il prent eſtate de ſon pier. Mes ſi leigne fits mozuſt ſauns iſſue de ſon cozps, donque ceo eſt vn remitter al puiſne frere, pur ceo que il eſt heire en le taile, et vn franktenement en le ley eſt eſcheate, et iecte ſur luy per force de le remainder, et il y ad nul enuers que il poit ſuer ſon action.

ALſo if Tenant in taile hath iſſue two ſonnes of full age, and he letteth the land tailed to the eldeſt ſonne for terme of his life, the remainder to the younger ſonne for terme of his life, and after the Tenant in taile dieth, in this caſe the eldeſt ſonne is not in his remitter, becauſe he tooke an eſtate of his father, but if the eldeſt die without iſſue of his body, then this is a remitter to the younger brother, becauſe hee is heire in taile, and a freehold in lawe is eſcheated & caſt vpon him by force of the remainder, and there is none againſt whō he may ſue his action.

(a) 12.E.4.20.
(b) Sect.684.685.

OF this opinion is (a) Littleton in our bookes, and of this ſufficient hath beene ſaid in the next Section before. See hereafter (b) ſome explanation hereof.

Sect.

Section 683.

¶ Eſmeſme le maner eſt, lou home ſoit diſſeiſie, & le diſſeiſor morust ſeiſie, et les tenits diſcendont a ſon heire, et lheire le diſſeiſor fait vn leas a vn hõe de meſmes les tenements pur terme de vie, le remainder a le diſſeiſee p̃ terme d̃ vie, ou in taile, ou en fee, le tenant a terme de vie morust, ore ceo eſt vn remitter al diſſeiſee, &c. Cauſa qua ſupra, &c.

¶ IN the ſame manner it is, where a man is diſſeiſed, and the diſſeiſor dieth ſeiſed, and the tenements diſcend to his heire, and the heire of the diſſeiſor make a leaſe to a man of the ſame tenements for terme of life, the remainder to the diſſeiſee for terme of life, or in taile, or in fee, the tenant for life dieth, now this is a remitter to the diſſeiſee, &c. *Cauſa qua ſupra, &c.*

¶ AND this ſtandeth vpon the ſame reaſon that the caſes in the two Sections precedent doe. See the next Section following.

Sect. 684.

¶* NOta, ſi tenant en taile enfeoffa ſon fits et vn auter per ſon fait de la terre taile en fee, et liuery d̃ ſeiſin eſt fait a lauter accordant al fait, & le fits rien conuſant de ceo agreea a le feoffment, & puis celuy que prist le liuery de ſeiſin deuy, & le fits ne occupia la terre, ne prent aſcun profit del terre durant la vie le pier, & puis le pier morust, ore ceo eſt vn remitter al fits, pur ceo que le franktenement eſt iect ſur luy per le ſuruiuor: Et nul default fuit en luy, pur ceo que il ne vnque a-

NOte if Tenant in taile infeoffe his ſonne and another by his deed of the land intailed, in fee, and liuery of ſeiſin is made to the other according to the Deed, and the ſon not knowing of this agreeth to the feoffment, and after hee which tooke the liuery of ſeiſin dieth, and the ſonne doth not occupie the land, nor taketh any proffit of the land during the life of the father, and after the father dieth, now this is a remitter to the ſonne, becauſe the freehold is caſt vpon him by the ſuruiuor. And no default was in

¶* IT ſhould ſeem by this marke that this was an addition to Littleton, but it is of Littletons owne worke, and agreeth with the originall, ſauing the originall begun this Section thus, Itē ſi tenãt en taile, &c.

¶ *Per ſon fait, &c.* Here Littleton materially addeth by his Deed, for if a man intendeth to (b) make a feoffment by parol to A. and B, and he and B. come vpon the land, A. being abſent, and make Liuery to B. in the name both of B. & A. & to their heirs this ſhall enure only to B, for neither can a man abſent take Liuery nor make Liuery without Deed.

(b) *Temps H.8. Feoffments. Br.72. 40.E.3.41. 10.E.4.1.a. 15.E.4.18. 18.E.4.12. 22.H.6.12.*

¶ *Et liuery de ſeiſin eſt fait a lauter accordant al fait, &c.* Note Liuery being made to one according to the Deede, enureth to both, becauſe the Deede whereunto the Liuery referreth is made to both, for the rule is, That Verba relata hoc maxime operantur per referentiam vt in eis in eſſe videntur.

¶ *Et le fits nient conusant de ceo, ne agreea a le Feoffement.* Here it appeareth, That if the son be Conusant, and agreeth to the Feoffement, &c. this is no Remitter to him. And therefore if the Feoffement were made by Deed indented, and the son with the other sealeth the Counterpart, and then the Feoffor maketh liuerie to the other according to the Deed, and the other dieth, the sonne is not remitted, because he was Conusant of the Feoffement, and agreed to the same, and Littleton saith it in the Case that he putteth, That there was no default in the sonne, because hee agreed not to the Feoffement in the life of the Father: And so it seemeth, That if A. be seised in Tayle, and haue Issue two sonnes, and by Deed indented betweene him of the one part, and the sonnes of the other part, maketh a Lease to the eldest for life, the remainder to the second in Fee, and dieth, and the eldest Sonne dieth without Issue, the second sonne is not remitted, because he agreed to the remainder in the life of the Father, or if the like Estate had beene made by Parol, if in the life of the father the Tenant for life had beene impleaded, and made default, and he in the remainder had beene receiued, and thereby agreed to the remainder, after the death of the father and the eldest sonne without Issue, the second sonne should not bee remitted, because he agreed to the remainder in the life of the father, all which is well warranted by the reason yeelded by our Author in this Section.

Vide Sect. 683.

greea, &c. en la vie son pier, et il ad nul enuers que il poit suer Briefe de Formedon, &c.

him, because hee did neuer agree, &c. in the life of his Father, and hee hath none against whom hee may sue a Writ of *Formdon*, &c.

Sect. 685.

¶ **CAr si home soit disseiste de certaine terre, et le Disseisor fait vn Fait de Feoffment, per que il infeoffa B. C. et D. et le liuerie de seisin est fait a B. et C. mes D. ne fuit al Liuerie de seisin, ne vnq̄ agreea a le Feoffment, ne vnque voile prender les profits, &c. et puis B. et C. deuieront, et D. eux suruesquist, et le Disseisee port son Briefe** Sur disseisin en le Per, **enuers D. il monstra tout le matter, coment il ne vnques agreea a le Feoffment, et issint il dischargera luy de damages, issint que le Demandant ne recouera ascuns dammages enuers luy, coment que il soit Tenant del franktenement del tre. Et vncore le statute de** Gloucester cap. 1. **voit, que le Disseisee recouera damages en briefe de** Entre, **foundue sur Disseisin vers celuy que est troue tenant. Et ceo est vn proofe en lauter case, que entant que**

FOr if a man bee disseised of certaine land, and the Disseisour make a Deed of Feoffement, whereby hee infeoffeth B. C. and D. and Liuerie of seisin is made to B. and C. but D. was not at the Liuerie of Seisin, nor euer agreed to the feoffment, nor euer would take the profits, &c. and after B. and C. die, and D. suruiue them, and the Disseisee bringeth his Writ vpon Disseisin in the *Per* against D. hee shall shew all the matter, how he neuer agreed to the feoffement, and hee shall discharge himselfe of Dammages, so as the Demaundant shall recouer no dammages against him, although he be Tenant of the freehold of the Land. And yet the Statute of *Gloucester cap.* 1. will, That the Disseisee shall recouer dammages in a Writ of Entrie founded vpon a Disseisin against him which is found Tenant. And this is a proofe in the other Case,

que liſſue en le Taile auient a le franktenement, et nemy per ſon fait, ne per ſon agreement, mes apres la mort ſon pier, ceo eſt vn Remitter a luy, entant que il ne poit ſuer Action ô Formedon, enuers nul auter perſon, &c.

that for as much as the Iſſue in taile came to the Freehold, and not by his Act, nor by his Agreement, but after the death of his father, therefore this is a Remitter to him, in as much as he cannot ſue an Action of *Formedon* againſt any other perſon, &c.

¶ This caſe ſtandeth vpon the ſame reaſon that the next precedent caſe doth.

¶ *Mes celuy que eſt troue Tenant, &c.* Here it appeareth, that Acts of Parliament are to be ſo conſtrued, as no man that is innocent or free from iniurie or wrong, be by a literall conſtruction puniſhed or indammaged: and therefore in this caſe albeit the letter of the Statute is generally to giue dammages againſt him that is found Tenant, and the Caſe that Littleton here putteth, D. being ſurniuor is conſequently found tenant of the Land; yet becauſe he waiued the Eſtate, and neuer agreed to the Feoffement, nor toke any profits, he ſhall not be charged with the dammages.

Section 686.687.

Item ſi vn Abbe aliena la tre de ſon meaſon a vn auter en fee, et l'alienee per ſon fait charge la terre oue vn rent charg̃ en fee, et puis l'alienee infeoffa l'abbe oue licence, a auer et tenã al Abbe et a ſes ſucceſſors a touts iours, et puis l'abbe morust, et vn auter eſt eſlieu, et fait Abbe: en ceſt caſe l'abbe que eſt le ſucceſſor, et ſon Couent, ſont ẽ lour Remitter, et tiendront la terre diſcharge, pur ceo que meſme l'abbe ne poit auer aſcun Actiõ, ne Briefe Dentre ſine aſſenſu Capituli, de meſme la terre enuers nul auter perſon.

ALſo if an Abbot alien the lãd of his houſe to another in Fee, and the Alienee by his Deed charge the land with a Rent-charge in Fee, and after the Alienee infeoffe the Abbot with Licence, To haue and to hold to the Abbot and to his ſucceſſors for euer, and after the Abbot die, and another is choſen and made Abbot: in this caſe the abbot that is the ſucceſſor, & his Couent, are in their remitter, & ſhal hold the lãd diſcharged, becauſe the ſame Abbot cannot haue an Action, nor a writ of *Entre ſine aſſenſu Capituli*, of the ſame Land, againſt any other perſon.

Sect. 687.

¶ En meſme le maner eſt, lou vn Eueſque, ou vn Dean, ou auters tiels Perſons aliena, &c. ſans aſſent, &c. et l'alienee charge la terre, &c. et puis l'eueſque repriſt eſtate de meſme la terre per Licence, a luy et a ſes ſuc-

IN the ſame manner is it, where a Biſhop or a Deane, or other ſuch perſons alien, &c. without aſſent, &c. and the Alienee charge the land, &c. and after the Biſhop takes backe an eſtate of the ſame land by Licence, to him and his Succeſ-

Successors, et puis Leuesque deuie, son Successor est en son Remitter, come en droit de son Eglise, et defeatera le charg, &c. Causa qua supra, &c.

sours, and after the Bishop dieth, his Successour is in his Remitter as in right of his Church, and shall defeat the Charge, &c. *Causa qua supra.*

COur Author hauing spoken of Remitters to singular or naturall persons, as Issues in Taile, and to Feme Couerts, and to their Heires, and to them in Reuersion or Remainder, and their Heires; now he speaketh of Remitters to Bodies politique and incorporate, as to Abbots, Bishops, Deanes, &c. And as Discents doe remit the heire which comes in the Per, so succession doth remit the Successor, albeit he commeth in the Post. And so in other cases where the Issue in Taile of full age shall be remitted, there in the like case shall the Successor be remitted also, and defeat all meane charges and incumbrances.

¶ *Oue Licence, &c.* That is, of the king and the Lords immediate and mediate, to dispence with the Statutes of Mortmaine, whereof see more before, Sect.140.

Sect. 688.

¶ Item si home suist faux action enuers le Tenant en Taile, sicome home voile suer enuers luy vn Briefe Dentre en le Post, suppolant per ẽ briefe que le tenant en taile nad pas entre, sinon per A. de B. que disseisist layel le demandant, et ceo est faux, et il recouer enuers le Tenant en le Taile per default, et suist execution, et puis l'Tenant en taile morust, son Issue poit auer Briefe de Formedon enuers luy que recouera, et sil voile pleader le recouerie enuers le Tenãt en taile, lissue poit dire que le dit A. de B. ne disseisist poynt layel celuy que recoueras, en le maner come son Briefe suppola, et issint il fauxera le recouerie. Auxy posito, que ceo fuit voyer, que le dit A. de B. disseisist layel le demandant que recoueras, et que apres le disseisin le demandant, ou son Pier, ou son ayel per vn fait auoient relesse al tenant en Taile, tout le droit que il auoit en la Terre, &c. et ceo nient contristeant

ALso if a man sue a false Action against Tenant in Taile, as if one will sue against him a Writ of Entrie in the *Post*, supposing by his Writ, That the Tenant in Tayle had not his entrie, but by A. of B. who disseised the Graundfather of the Demaundant, and this is false, and he recouereth against the Tenant in Taile by default, and sueth Execution, and after the Tenant in Tayle dieth, his Issue may haue a Writ of *Formedon* against him which recouereth, and if hee will plead the Recouerie against the tenant in taile, the Issue may say, That the said A. of B. did not disseise the Grandfather of him which recouered in mãner as his writ suppose, and so he shall falsefie his recouery. And admit this were true, That the sayd A. of B. did disseise the Graundfather of the Demaundant which recouered, and that after the Disseisin, the Demandant, or his father, or his Grandfather by a deed had released to the Tenant in Taile all the right which hee had in the

ant il suist vn Brieue Dentre en le Post enuers le Tenant en Tail, en le manner come est auauntdit, et le Tenaunt en Taile pleda a celuy, Que le dit A. de B. ne disseisist pas son ayel, en le manner come son Brieue supposa, et sur ceo sont a Issue, et lissue est troue pur le Demandant, per que il ad iudgement de recouer, et suist execution, et puis le Tenant en le Taile mozust, son Issue poit aũ vn Brieue de Formedon enuers celuy que recouera, et sil voile pleade le recouerie per laction trie enuers son pier, que fuit Tenant en Taile, donque il poit monstrer et pleader le Release fait al son pier, et issint laction que fuit sue, feint en Ley.

land, &c. and notwithstanding this hee sueth a Writ of Entrie in the *Post*, against the Tenant in Taile, in manner as is aforesayd, and the Tenant in Taile plead to him, That the sayd A. of B. did not disseise his Grandfather, in such manner as his Writ suppose, and vpon this they are at Issue, and the Issue is found for the demandant, wherby he hath iudgement to recouer, and sueth execution, & after the Tenant in Taile dieth, his Issue may haue a Writ of *Formdon* against him that recouered, and if he will plead the recouery by the Action tried against his father who was Tenant in taile, then he may shew and plead the Release made to his father, & so the Action which was sued, feint in Law.

¶ *Le recouera enuers le tenant en taile per default.* Littleton addeth (by default) because if the (c) recouery passed vpon an issue tried by verdict, hee shall neuer falsifie in the point tryed, because an attaint might haue beene had against the Iurors, and albeit all the Iurors be dead, so as the attaint doe faile, yet the issue in taile shall not falsifie in the point tried, which, vntill it be lawfully anoyded, pro veritate accipitur. As if the Tenant in tayle be impleaded in a Formedon, and he trauerseth the gift, and it is tryed against him, and thereupon the Demandant recouer. In this case the issue in tayle shall not falsifie in the point tryed [redacted] but he may falsifie the recouery by any other matter: as that the Tenant in tayle might haue pleaded a collaterall warrantie, or a Release, as Littleton here putteth the case, or to confesse & auoid the point tried. And Littletons case holdeth not only in a recouery by default, whereof he speaketh, but also vpon a nihil dicit, or Confession or Demurrer.

(c) 12.E.4.19. 13.E.4.3. 11.H.4.89. 7.H.4.17. 14.H.7.11.28. *Ass.*32.52. 34.*Ass.*7.10.H.6.5. 21.H.6.13.b. *Brooke tit. Faux. de Recoueries* 55.

Sect. 689.

¶ Et il semble que feint action est autant adire en English, a fained action, cestascauoir, tiel action, que coment que les parolx de le brieue sont voyers, vncore pur certaine causes il nad cause ne title per la ley de recouer pur mesme laction. Et faux action est, lou les parolx de brieue sont faux. Et en les deux cases auantdits, si le cas fuit tiel, que apres tiel recouery & execution ent

AND it seemeth that a faint action is asmuch to say in English, *a fained action*, that is to say such an Action as albeit the words of the Writ bee true, yet for certain causes he hath no cause nor title by the Law to recouer by the same action. And a false action is, where the wordes of the Writ bee false. And in these two Cases aforesaid, if the case were such that after such recouery, and execution

ent fait, le tenant en taile vst dis-
seisie celuy que recouera, et ent
mozust seisie, per que la terre dis-
cendist a son issue, ceo est vn re-
mitter al issue, & lissue est eins per
force de le taile, & pur cel cause
ieo aye mis les deux cases prece-
dents, pur enformer toy, mon
fits, que lissue en taile per force
dun discent fait a luy apres vn
recouery & execution fait enuers
son auncester poit estre auxy bien
en son remitter sicome il serroit
per le discent fait a luy apres vn
discontinuance fait per son aun-
cester de les terres tailes, per
feoffement en pais, ou auter-
ment, &c.

thereupon done the tenant in tayle had disseised him that recouered, and thereof died seised whereby the Land descended to his issue, this is a Remitter to the issue, and the issue is in by force of the taile, and for this cause I haue put these two cases precedent, to enforme thee (my Sonne) that the issue in tayle by force of a discent made vnto him after a recouerie and Execution made against his Ancestor, may be aswell in his remitter as he shold be by the discēt made to him after a Discontinuance made by his Ancestor of the entayled lands by feoffment in the Countrie or otherwise, &c.

¶ HEre Littleton explayneth what a faint action is, and what a false action is, which is plaine and perspicuous. And here it is to bee obserued, that a Remitter may bee had after a recouery vpon a faint action by a disseisin and a discent, aswell as by a discent after a discontinuance by a feoffment, &c.

Section 690.

28. Ass. 32.34. Ass. Pl.7. 15.E.3. Age 95.11.H.4.89 7.H.4.17.33.E.3. Entre cong. 31.21.H.6.13. 10.H.5.5.12.E.4.20. 14.H.7.11.23. Eliz. Dier 376. lib.1. fol. Shelleys case. Pl.Com.55.

¶ HEere it appeareth, that if a iudgemēt be giuē against a tenāt in tayle vpon a faint or false action, and Tenant in tayle die before execution, no execution can bee sued against the issue in tayle. But if in a common recouery iudgement bee had against Tenant in tayle where hee voucheth, and hath iudgement to recouer ouer in value, albeit the Tenant in Tayle dieth before execution, yet the recoueror shall execute the iudgement against the issue in tayle in respect of the intended recompence, ond for that it is the common assurance of the Realme, and is well warranted (d) by our Bookes, and was not inuented by Iustice Choke who was a graue and learned Iudge in the time of E.4. (as some hold by tradition) but it may bee

Set hereafter Sect.709. 15.E.3. briefe 324.42.E.3. 53.44.E.3.21.48.E.3.11. 1.E.4.5.8.E.4.2.

(d) 12.E.4.20. Dier 23.Eliz.376. lib.10. fol.37.38. In Mary Portingtons Case.

¶ Item ē les cases auantdits, si le cas fuit tiel, que apres ceo que le demandant auoit iudgement de recouer enuers l'tenant ē taile, & mesme le tenant en taile mozust deuaunt ascun execution eue enuers luy p que les tenements discendōt a son issue, et celuy q̄ recouera suist vn Scire facias hors de le iudgement dauer execution de le iudgement enuers lissue en taile, lissue pledera le matter

ALso in the cases aforesaid, if the case were such, that after that the Demandant haue iudgement to recouer against the Tenant in tayle, and the same Tenant in tayle dieth before any execution had against him whereby the Tenements discēd to his issue, & he who recouereth sueth a *Scire facias* out of the iudgement to haue execution of the iudgement against the issue in taile, the issue shal plead the matter as aforesaid, and so

matter come auaunt et dit: Et issint prouas que le dit recouery fuit faux, ou feint en ley, & issint luy barrera dauer execution de le iudgement.

proue that the said recouery was false or faint in Law, and so shall barre him to haue execution of the iudgment.

that it was vpon former Authorities and opinions of Iudges discouered by him, assented vnto by the rest of the Iudges.

If a recouery bee had against Tenant for life without consent or Couine, though it be without title, and Execution bee had, and Tenant for life dieth, the reuersion or remainder is discontinued, so as he in the reuersion or remainder cannot enter, but if such a recouery be had by agreement and Couine betweene the Demandant and the Tenant for life, then, as hath beene said, it is a forfeiture of the estate for life, and he in the reuersion or remainder may enter for the forfeiture. So it is if the Tenant for life suffer a common recouery at this day, it is a forfeiture of his estate, for a common recouery is a common conueyance or assurance, whereof the Law taketh knowledge. Since Littleton wrote there were two Statutes (e) made for preseruation of Remainders and Reuersions expectant vpon any manner of estate for life, the one in 32.H 8. the other in 14.Eliz. but 32.H 8. extended not to recoueries when Tenant for life came in as Mouchee, &c. and therefore that act is repealed by 14.Eliz. and full remedie prouided for preseruation of the entrie of them in reuersion or remainder. But the Statute of 14.Eliz. extendeth not to any recouery, vnlesse it bee by agreement or Couyne. Secondly, (f) if there be Tenant for life, Remainder in taile, the Reuersion or remainder in fee, if Tenant for life be impleaded by agreement, and he vouche Tenant in taile, and he vouch ouer the common Mouchee, this shall barre the Reuersion or Remainder in fee, although hee in the reuersion or remainder did neuer assent to the recouery, because it was not the intent of the act to extend to such a recouerie in which a Tenant in taile was vouched, for he hath power by common recouery, if he were in possession, to cut off all reuersions and remainders. And so if Tenant for life had surrendred to him in Remainder in taile, hee might haue barred the remainders and reuersions expectant vpon his estate. Thirdly, where the prouiso of that act speaketh of an assent of Record by him in reuersion or remainder, it is to bee vnderstood, that such assent must appeare vpon the same Record either vpon a Voucher, Aid prier, receite, or the like, for it cannot appeare of Record, vnlesse it be done in course of Law, and not by any extraiudiciall entrie, or by Memorandum.

5.Ass 3. 5.E.3. entre cong. 42 lib 1.fo.15.16. Sir.William Pelhams case.

(e) 32.H.8 ca.31. 14.Eliz.ca.8.

(f) Lib.3.fo.60.61. Lincolne Colledge case.

Section 691.

¶ Item si tenant en taile discontinua le taile, et morust, et son issue port son briefe ď Formedon enuers le discontinuee (esteant tenant de franktenement del terre) et le discontinuee pleda q̄ il nest tenant, mes oustermēt disclaima de le tenancy en la terre, en cest cas le iudgement serra, que le tenant alast sans iour, et apres tiel

ALso if Tenant in taile discontinue the taile, & dieth, and his issue bringeth his writ of *Formedon* against the discontinuee (being tenant of the freehold of the land) and the Discontinuee plead that he is not tenant, but vtterly disclaymeth from the tenancy in the land. In this case the iudgement shall bee that the Tenant goeth without day, and after such

¶ HEre it appeareth that vpon the plea of non-tenure, or of a disclaimer of the tenant in a Formedon in the Discender, albeit the expresse iudgement be that the tenant shall goe without day, yet in iudgement of Law the Demandant may enter according to the title of his writ, and bee seised in taile notwithstanding the Discontinuance. And here Littleton saith the Demandant shalbe adiudged in his Remitter, where he taketh Remitter in a large sence, for in this case the Demandant hath not two rights, but hath only one ancient right, and is restored to the same by course of Law, and so Remitter here is taken for a recontinuance of the right.

5.E.4.1. 36.H.6 29. 6.E.3.8. 4.E.4.38.

Non-tenure Vid. Bracton lib.fol.331.432 & 414. Britton cap.84.

¶ On

¶ *Ou le demandant ne recouera damages.* Here is to bee obserued that in such a Præcipe where the Demandant is to recouer damages, if the Tenant pleade non-tenure or disclaime, (f) there the Demandant may auerre him to be tenant of the land, as his Writ suppose for the benefit of his damages, which otherwise hee should lose, or pray iudgement & enter. (g) But where no damages are to be recouered, as in a Formedon in the Discender, and the like, there hee cannot auerre him tenant, but pray his Iudgement and enter, for thereby hee hath the effect of his suite Et frustrà fit per plura, quod fieri potest per pauciora.

(f) 13.H.7.23. 36.H.6.29. 22.H.6.44 4.E.4.38. 5.E.4.1. 6.E.3.8.

(g) 8.E.3.434. 24.E.3.9. 11.H.4.16. & 7.H.6.17.

5.E.4.1.

¶ *Auerrer.* To auerre or auouch, or verifie, verificare, whereof commeth verificatio an auerment, and is so said as well in English as in French. And is twofold, viz. generall and particular. A generall auerment, which is the conclusion of euery plea to the Writ, or in barre of replications and other pleadings (for Counts or Auowries in nature of Counts need not bee auerred) containing matter affirmatiue, ought to be auerred, & hoc paratus est verificare, &c. Particular auerments are, as when the life of Tenant for life, or Tenant in taile are auerred, and there, though this word (verificare) be not vsed, but the matter auouched and affirmed, it is vpon the matter an auerment. And an auerment containeth aswell the matter as the forme thereof.

¶ *Que le tenant alast sans iour.* Quod tenens eat sine die. This is the entrie of the iudgement in that case, that the Tenant shall goe without day, that is to be discharged of further attendance, and this is some-

iudgement issue en le taile que est demãdant, poit entrer en la terre, nyent contristeant le discontinuance, et per tiel entrie il serra adiudge eins en son Remitter. Et la cause est, pur ceo que si ascun hõe suist Præcipe quod reddat, enuers ascun tenant de franktenement, en quel action l' demandant ne recouera damages, et le tenant pledast nontenure, ou autrement disclaima en le tenancy, le demandant ne poit auerrer son briefe, et dirra q̃ il est tenãt cõe le brieue suppose. Et pur cel cause le demãdant apres ceo que iudgement est done q̃ le tenant alast sans iour, poit entrer ẽ les teneměts demands, le quel serra auxy graund aduantage a luy en ley, sicome il auoit iudgement d̃ recouerer enuers le tenant, et per tiel entrie il est en son remitter per force del taile. Mes lou le demand̃ recouera damages enuers le tenant, la le demandant poit auerrer, que il est tenãt come le brieue supp̃, & ceo pur laduantage del

iudgement the issue in the taile that is demandant may enter into the land notwithstanding the discontinuance, and by such entry hee shall be adiudged in his Remitter. And the reason is for that if any man sue a *Præcipe quod reddat* against any tenant of the freehold in which action the demandant shall not recouer damages, and the tenant pleads nontenure, or otherwise disclaime in the tenancie, the demandant cannot auerre his writ, and say that hee is tenant as the writ supposeth. And for this cause the demandãt after that that iudgemẽt is giuen that the tenant shall goe without day, may enter into the tenements demanded, the which shall bee as great an aduantage to him in law, as if he had iudgement to recouer against the tenant, and by such entrie hee is in his remitter by force of the entaile. But where the demandant shall recouer damages against the tenãt, there the demandant may auerre that he is tenant, as the writ supposeth and that for the aduan-

del demandant pur recouer ſes damags, ou autermẽt il ne recoueroit ſes damages, queux ſont ou fueront a luy dones per la ley.

tage of the demandant to recouer his damages, or otherwiſe hee ſhall not recouer his damages, which are or were giuen to him by the law.

When the Demandant or Plaintife haue purchaſed his Letters of abſolution, vpon ſhewing them to the Court, he may haue a reſommons or reattachement to recontinue the cauſe againe. But it is to be knowne, that when iudgement is giuen againſt the Tenant or Defendant vpon a plea in barre, or to the writ, &c. the iudgement is all one, viz. Quod tenens or defendens eat inde ſine die, and ſhall haue reference to the nature and matter of the plea, and ſo bee taken either to goe in barre, or to the writ. So on the other ſide when iudgement is giuen againſt the Plaintife either in barre of his action or in abatement of his writ, &c. the iudgement is all one, viz. Nihil capiat per breue, and it appeareth by the Record whether the plea did goe in barre or to the writ. And the cauſe of the iudgement is neuer entred in the Record in any caſe, for that vpon conſideration had of the Record it appeareth therein.

time ſhall for that action whereof Littleton here putteth an example, & ſometime temporarie, whereof Littleton also hath put an example, as when excommengement is pleaded in diſability of the Plaintife or demandant, there the award is, that the Tenant or Defendant ſhall goe without day, and yet

Vid. Sect. 101.

3.H.42.11.

Section 692.

¶ Item ſi home ſoit diſſeiſie, & le diſſeiſor deuy, ſon heire eſteant eins per diſcent, ore lentrie de le diſſeiſee eſt tolle, et ſi le diſſeiſee porta ſon briefe dentrie ſur diſſeiſin en le Per, enuers lheire, et lheire diſclaime en le tenancy, &c. le demandant poit auerrer ſon briefe que il eſt tenant come le briefe ſuppoſe ſil voyt, pur recouerer ſes damages, mes uncore ſil voyt relinquiſher le auerment, &c. il poit loialment entrer en la terre per cauſe del diſclaimer, nient obſtant que ſon entry deuant fuit tolle, et ceo fuit adiudge deuant mon maſter ſir R. Danby tades Chief Juſtice de la common banke & ſes compagnions, &c.

ALſo if a man be diſſeiſed, and the diſſeiſor die his heire being in by diſcent, now the entrie of the diſſeiſee is taken away, and if the diſſeiſee bring his Writ of entrie *Sur diſſeiſin* in the *Per* againſt the heire, and the heire diſclaime in the tenancie, &c. the Demandant may auerre his writ that hee is tenant as the writ ſuppoſe, if he will, to recouer his damages, but yet if he will relinquiſh the auerment, &c. he may lawfully enter into the land becauſe of the diſclaimer, notwithſtanding that his entrie before was taken away, and this was adiudged before my Maſter Sir *R. Danby* late chiefe Iuſtice of the Common place and his Companions, &c.

¶ *Item ſi home ſoit diſſeiſie, &c.* Albeit in this caſe and in the caſe before the entrie of the Demandant is his owne act, and the Demandant hath no expreſſe iudgement to recouer, yet ſhall he be remitted, becauſe he in iudgement of the Law ſhall be in according to the title of his writ, and by his entrie defeate the Diſcontinuance, and conſequently is remitted to his ancient eſtate.

36.H.6 fo.29.

¶ *Sir Robert Danbye* Knight was a Gentleman of an ancient and faire diſcended family, and chiefe Iuſtice of the Court of Common pleas, a graue, reuerend

5.E.4.41. 4.E.4.38.

rend & learned ſudge, of whom our author ſpeaketh here with very great reuerence, as you may perceiue. And here is to be noted how neceſſarie it is, after the example of our Author, to obſerue the iudgements, and reſolutions of the Sages of the Law.

Sect. 693.

19. Aſſ.p.26. 43 Aſſ.p.3. 11.H.7.20.3.H.6.19. 40.E.3.43.

THere appeareth a diuerſitie betweene a right of entrie, and a right of Action; for if a man of full age hauing but a right of Action, taketh an Eſtate to him, hee is not remitted: but where hee hath a right of Entrie, and taketh an Eſtate, he by his entry is remitted, becauſe his entry is lawfull. And if the Diſſeiſor infeoffe the Diſſeiſee and others, the Diſſeiſee is remitted to the whole, for his entry is lawfull: otherwiſe it is if his entrie were taken away.

¶ *Lou le'ntrie eſt congeable.* A. is diſſeiſed of a Mannor, whereunto an Aduowſon is appendant, an Eſtranger vſurpe to the Aduowſon, if the Diſſeiſee enter into the Mannor, the Aduowſon is recontinued againe, which was ſeuered by the vſurpation. And ſo it is if Tenant in Tayle be of a Mannor, whereunto an Aduowſon is appendant, the Tenant in Tayle diſcontinueth in Fee, the Diſcontinuee granteth away the Aduowſon in Fee, and dieth, the Iſſue in Tayle recontinueth the Mannor by recouerie, he is therby remitted to the Aduowſon, and in both caſes he that right hath ſhall preſent when the Church becommeth voyd.

¶ Item lou lentry dun home eſt congeable, coment que il prent eſtate a luy quaunt il eſt de pleine age pur terme de vie, ou en taile, ou en fee, ceo eſt vn Remitter a luy, ſi tiel priſel de eſtate ne ſoit per fait indent, ou per matter de record, que concludera ou eſtoppera. Car ſi hõe ſoit diſſeiſie, et repriẽt eſtate de le Diſſeiſor ſans fait, ou per fait polle, ceo eſt vn remit al diſſeiſee, &c.

ALſo where the entrie of a man is congeable, although that he taks an eſtate to him when he is of full age, for terme of life, or in Taile, or in Fee, this is a Remitter to him, if ſuch taking of the Eſtate be not by Deed indented, or by matter of Record, which ſhal cõclude or eſtop him: for if a man be diſſeiſed, and takes backe an Eſtate from the Diſſeiſor without Deed, or by deed pol, this is a remitter to the Diſſeiſee, &c.

8.R.2.Quar.im.199. 19.H.6.30.8.H.6.17. 21.H.6.2.3.H.4.8.14.H.6. 15.16.37.H.6.18. 26.H.8.4.F.N.B.36.f.& 35.b.

22.Aſſ.p. en le caſe de Thiobald Grimale.

The Patron of a Benefice is outlawed, and the Church becommeth voyd, an Eſtranger vſurpeth, and ſixe moneths paſſe, the King doth recouer in a Quare impedit, and remoone the Incumbent, &c. the Aduowſon is recontinued to the rightfull Patron. And ſo note a diuerſitie betweene a Recontinuance and a Remitter, for a Remitter cannot be properly vnleſſe there be two titles, but a recontinuance may be where there is but one.

13.H.4.5.3.H.4.17.8.H.4. 8.12.H.4.19.35.Aſſ.8. 17.Aſſ.3.29.Aſſ.53.43.E.3 17. Parkers caſe.44 E.3.Eſtop.10 21.H.6.2. & Paſton.8.H.6. 17.& Cotiſmore.

¶ *Per fait indent, &c.* Here it appeareth, That if the Diſſeiſor by Deed indented make a Leaſe for life, or a gift in Taile, or a Feoffement in fee, whereunto Liuerie of Seiſin is requiſite, yet the Deed indented ſhall not ſuffer the Liuerie made according to the forme and effect of the Indenture, to worke any remitter to the Diſſeiſee, but ſhall eſtoppe the Diſſeiſee to claime his former eſtate: and if the Diſſeiſor vpon the Feoffment doth reſerue any rent or condition, &c. the rent or condition is good: and the reaſon wherefore a deed indented ſhall conclude the taker more than the Deed polle, is, for that the Deed poll is onely the Deed of the Feoffor, Donor, and Leſſor, but the Deed indented is the Deed of both Parties, and therefore as well the taker as the giuer is concluded.

¶ *Ou per Record.* As by Fine, Deed indented, and inrolled, and the like.

Sect.

Sect. 694.

¶ Item ſi home leſſa terre pur terme de vie a vn auť, le quel aliena a vn auter en fee, et lalienee fait eſtate a le Leſſour, ceo eſt vn Remitter al Leſſor, pur ceo que ſon entrie fuit congeable, &c.

ALſo if a man let land for terme of life to another, who alieneth to another in Fee, and the Alienee make an Eſtate to the Leſſour, this is a Remitter to the Leſſour, becauſe his Entrie was congeable, &c.

This is euident enough vpon that which hath beene ſayd.

Section 695.

¶ Item ſi home ſoit diſſeiſie, et le Diſſeiſor leſſa la terre al diſſeiſee per fait pol, ou ſans fait pur terme des ans, per que l' diſſeiſee entra, ceſt entre eſt vn Remitter a le diſſeiſee. Car en tiel caſe lou lentre dun home eſt congeable et vn Leaſe eſt fait a luy, coment que il claima p parolx en pais, que il ad eſtate per force de tiel leaſe, ou dit ouertment que il ne claima riens en la terre ſinon per force de tiel leaſe, vncore ceo eſt vn remitter a luy, car tiel diſclaimer en le pais neſt riens a purpoſe. Mes ſil diſclaimer en court de Record, que il nad eſtate forſque per force de tiel leaſe, et nemy autrement, donqs il ẽ conclude, &c.

ALſo if a man be diſſeiſed, and the Diſſeiſor let the Land to the Diſſeiſee by deed pol, or without Deed, for terme of yeares, by which the Diſſeiſee entreth, this entrie is a Remitter to the diſſeiſee. For in ſuch caſe where the entrie of a man is congeable, and a Leaſe is made to him, albeit that he claimeth by words in *Païs*, that hee hath eſtate by force of ſuch Leaſe, or ſaith openly, That hee claimeth nothing in the Land but by force of ſuch leaſe, yet this is a Remitter to him, for that ſuch diſclaimer in *Païs* is nothing to the purpoſe. But if he diſclaime in court of Record, that hee hath no eſtate but by force of ſuch Leaſe, and not otherwiſe, then is hee concluded, &c.

HEre appeareth a Diuerſitie betweene a Claime in Paiis of an Eſtate, and a Claime of Record, for a Claime in Paiis ſhall not hinder a Remitter. Otherwiſe it is of a claime of Record, becauſe that doth worke a Concluſion.

Sect. 696.

¶ Item ſi deux Joyntenaunts ſeiſie de certain tenements en Fee, lun

ALſo if two Ioyntenants ſeiſed of certaine Tenements in Fee, the one being of

HEre note a diuerſitie worthy the obſeruation, that where Joyntenants or Coparcenes haue one and the ſame remedie, if the one enter, the

10.H.6.10. 19.H.6.45. 31.H.6.tit.Entr.cong.

the other shall enter also: but where remedies bee seuerall, there it is otherwise. As if two Ioyntenants or Coparceners ioyne in a reall Action, where their entrie is not lawfull, and the one is summoned and seuered, and the other pursueth and recouereth the moitie, the other Ioyntenant or Coparcener shall enter and take the profits with her, because their remedie was one and the same. But where two Coparceners bee, and they are disseised, and a Discent is cast, and they haue issue and die, if the Issue of the one recouer her moitie, the other shall not enter with her, because their remedies were seuerall, and yet when both haue recouered, they are Coparceners againe. So here in this Case that Littleton putteth, the two Ioynetenants haue not equal remedie, for the Infant hath a right of entrie, and the other a right of Action; and therfore the Infant beeing remitted to a moitie, the other shall not enter and take the profits with her.

esteant de pleine age, lauter deins age sont disseisies, &c. et l'disseisor morust seisie, et son issue entra, lun de les Jointenants esteant adonez deins age, et apres que il vient al pleine age, lheire le disseisor lessa les Tenements a mesmes les Joyntenants pur terme de lour deux vies, ceo est vn remitter (quãt al moitie) a celuy que fuit deins age, pur ceo que il est seisie de cest moitie que affiert a luy en fee, pur ceo que son entre fuit congeable. Mes lauter Jointenaunt nad en lauter moity forsque estate pur terme de sa vie, per force de le lease. pur ceo que ẽ entre fuit tolle, &c.

full age, the other within age, bee disseised &c. and the Disseisor die seised, and his Issue enter, the one of the Ioyntenants being then within age, and after that he commeth to full age, the heire of the Disseisor letteth the Tenements to the same Ioyntenants for terme of their two liues, this is a Remitter (as to the moitie) to him that was within age, because hee is seised of the moitie which belongeth to him in fee, for that his entry was congeable. But the other Iointenant hath in the other moity but an estate for terme of his life by force of the lease, because his entry was taken away, &c.

If A. and B. Jointenants in Fee, be disseised by the father of A. who dieth seised his sonne and heire entreth, he is remitted to the whole, and his Companion shall take aduantage thereof. Otherwise heere in the Case of Littleton, for that the aduantage is giuen to the Infant more in respect of his person, than of his right, whereof his Companion shal take no aduantage. But if the Grandfather had disseised the Ioyntenants, and the Land had discended to the father, and from him to A. and then A. had died, the entrie of the other should be taken away by the first discent, and therefore he should not enter with the heire of A.

V.35.Ass.Pl.Vltimo. But here in the case of Littleton, if after the discent the other Ioyntenant had died, and the Infant survived, some say that he should haue entred into the whole, because he is now in iudgment of Law, solely in by the first Feoffement, and he claimeth not vnder the Discent.

Chap.13. Of Warrantie. Sect.697.

V.Sect.188.733.

Cil est commune-ment dit. Here by the opinion of Littleton, Communis opinio is of authoritie, and standes with the rule of Law, A communi obseruãtia non est recedendum:

Cil est commune-ment dit, Que trois Garranties y sont, ẽ, Garrantie lineal, Garrantie

IT is commonly said that there be three Warranties, *scilicet*, Warrantie Lineall, Warrantie Co-

rantie collaterall, et Garrantie que commence per diſſeiſin. Et eſt aſcauoir, que deuant leſtatute de Glouc̃, touts Garranties queux diſcendont a eux queux ſont heires a eux que ſeſoyent les Garranties, fueront barres a meſmes les heires a demander aſcuns terres ou tenements encounter les Garranties, forepriſe les garranties que commencerent per diſſeiſin, car tiel Garrantie ne fuit vnque barre al heire, pur ceo que le Garrantie commence per tort, ſ. per diſſeiſin.

laterall, and Warrantie that commence by diſſeiſin. And it is to bee vnderſtood, that before the Statute of Glouc'. all Warranties which diſcended to them which are heires to thoſe who made the Warranties, were barres to the ſame heires to demand any Lands or Tenements againſt the warranties, except the Warranties which commence by diſſeiſin. For ſuch warranty was no barre to the heire, for that the Warrantie commẽced by wrong, *viz.* by diſſeiſin.

and againe, Minime mutanda ſunt quæ certam habuerunt interpretationem.

Here our Author beginneth this Chapter with an exact diuiſion of Warranties. A Warrantie is a Couenant reall annexed to Lands or Tenements whereby a man and his heires are bound to warrant the ſame, and eyther vpon voucher or by iudgement in a writ of Warrantia cartæ to yeild other lands and Tenements (which in olde Bookes is called in excambio) to the value of thoſe that ſhall be euicted by a former Title, or elſe may be vſed by way of Rebutter. *Bract. lib.2. fol.37. lib.5. fol. 380.381. &c. Glanvil. lib.3. cap.1.2.3. Lib 7. cap 2.3. lib. 9. cap.4. Britton cap.105. fol. 249.250. &c. & fol 88.106. b.196.197. Fleta lib.5. cap. 15. Lib.6. cap.23. Mirror cap.2.§.17.*

¶ *Rebouter* is a French word, and is in Latine repellere, to repell or bar, that is in the vnderſtanding of the Common Law, the action of the heire by the warranty of his Anceſtor, and this is called to Rebutte or repell. (c) Britton ſaith, Garranter en vn ſence ſignifie a defender ſon tenant en ſa ſeiſin, & en auter ſence ſignifie que ſi il ne defende que le garrant luy ſoit tenue a eſchanges, & de faire ſon gree a la vaillaunce. (d) Bracton ſayth, Warrantizare nihil aliud eſt, quam defendere & acquietare tenentem qui Warrantum vocauit in ſeiſina ſua. (e) Fleta ſaith, Warrantizare nihil aliud eſt quam poſſidentem vocantem defendere & acquietare in ſua ſeiſina vel poſſeſſione erga petentem, &c. & tenens de re Warranti excambium habebit ad Valentiam. 38.E.3.21.45.E.3.18.

(c) *Britton. fol.197.b.*

(d) *Bracton lib.5. fol.380.*

(e) *Fleta lib.5. cap.15.*

It is to be obſerued that there be two kind of Warranties, that is to ſay Wartantia expreſſa, tacita vulgarly ſaid Warrantie in deed, becauſe they be expreſſed, & warranties in law, becauſe the law doth tacitely imply them. And this diuiſion of warranties that Litt. here ſpeaketh of, he intendeth of Warranties in deed. And of warranties in Law more ſhall bee ſaid hereafter in this Chapter. As for promiſes or Contracts annexed to Chattels reall or perſonall they are not intended by our Author in his ſaid diuiſion, but only warranties concerning Freeholds and Inheritances. *Lib.4. fol.81. Mekes Caſe.* *Vide Sect.733.*

¶ *Deuant le ſtatute de Glouc.* This Statute was made at a Parliament holden at Gloceſter in the firſt yeare of the raigne of King E.1. and therefore it is called the Statute of Gloceſter. *Glouc. cap.3. Vide Sect.724.725. & 727. &c.*

¶ *Sont barres a meſmes les heires a demander aſcuns terres, &c.* For the Statute, as hath beene ſaid, being made in 6.E.1. (was before the Statute of Donis conditionalibus which was enacted 13.E.1.) when all ſtates of Inheritance were fee ſimple. But after the Statute of 13.E.1. the heire in tayle is not barred by the warrantie of his Anceſtor vnleſſe there be Aſſets, as ſhall be ſaid hereafter more largely in this Chapter. *Bracton lib.4. fol.321.b. Fleta lib.5. cap.34. 7.E.3. Garr.47.*

By the Statute of Gloceſter foure things are enacted.

Firſt, that if a Tenant by the curteſie alien with warrantie and dieth, that this ſhall bee no barre to the heire in a writ of Mordanceſter without Aſſets in fee ſimple. And if Lands or Tenements diſcend to the heire from the Father hee ſhall bee barred hauing regard to the value thereof.

Secondly, That if the heire, for want of Assets at that time discended, doth recouer the lands of his Mother by force of this Act, and afterwards Assets discend to the heire from the Father, then the Tenant shall recouer against the heire the Inheritance of the Mother by a Writ of Iudgement, which shall issue out of the Record, to rescommon him that ought to warrant, as it hath beene done in other Cases, where the heire being vouched commeth into the Court, and pleadeth that he hath nothing by discent.

Thirdly, That the issue of the Sonne shall recouer by a Writ of Cosinage, Aiel and Besaiel.

And lastly, that the heire of the wife after the death of the Father and Mother shall be barred of his Action to demand the Heritage of the Mother by Writ of Entrie, which his Father aliened in the time of his Mother, whereof no fine was leuied in the Kings Court.

Concerning the first, there be two points in Law to be obserued.

First, Albeit the Statute in this Article name a Writ of Mordancester, and after Writs of Cosinage, Aiell and Besaiel (e) yet a Writ of Right, a Formedon, a Writ of Entry Ad Communem Legem, and all other like Actions are within the purueiw of this Statute, for these Actions are put but for examples.

(e) 11.E.2.tit.Garr.83. 4.E.3. Garr.63. 18.E.3.51. Pl.Com.110. 7.E.3.53. Temps E.1.Garr.87.

Secondly, where it is said in the said Act, (if the Tenant by the curtesie alien) yet his release with warranty to a Disseisor, &c. is within the purueiw of the Statute, for that it is in equall mischiefe, and if that euasion might take place, the Statute should haue beene made in vaine.

27.E.3.89. 14.E.4.Garr.5. Dier quarto Mar.148.a.

If Tenant by the curtesie be of a Seigniorie, and the Tenancie escheate vnto him, & after he alieneth with warrantie, this shall not bind the issue, vnlesse Assets discend, for it is in equall mischiefe. But notwithstanding this Statute, if Feme Tenant in Dower had aliened in fee with warranty and died, the warranty had bound the heire vntill the Statute (o) of 11.H. 7. since our Author wrote. By which Statute the heire may enter notwithstanding such warrantie.

22.Ass 9.& 37. Temps E.1 Garr.86. (o) 11.H.7.cap.20.

But note there is a diuersitie betweene a warranty on the part of the Mother, and an estoppell. For an estoppell of the part of the Mother shall not bind the heire, when hee claimeth from the Father. As if Lands bee giuen to the husband and wife; and to the heires of the husband, the husband make a gift in tayle, and dieth, the wife recouereth in a Cui in vita against the Donee supposing that she had fee simple, and make a feoffment and dieth, the Donee dieth without issue, the issue of the Husband and Wife bring a Formedon in the Reuerter against the Feoffee, and notwithstanding that he was heire to the Estoppell, and the Mother was estopped, yet for that he claymed the Land as heire to his Father, hee was not estopped. Note, that warranties are fauoured in Law being part of a mans assurance, but estoppels are odious.

18.E.3.9.

If a feme heire of a Disseisor infeoffeth me with warrantie, and marrieth with the Disseisee, if after the Disseisee bring a Præcipe against me, I shall rebut him, in respect of the warrantie of his wife, and yet hee demandeth the Land in another right. And so if the Husband and wife demand the right of the wife, a warranty of the collaterall Ancestor of the Husband shall barre.

21.R.2.Iudgement 263.

If a woman had beene Tenant for life, the remaynder or Reuersion to her next heire, and the woman had alened in fee and died, this warranty had barred her heire in Remaynder or Reuersion, but this is partly holpen by the said Act of 11.H.7. viz. where the woman hath any estate for life of the Inheritance or Purchase of her Husband, or giuen to her by any of the Ancestors of the Husband, or by any other person seised to the vse of her Husband or of any of his Ancestors, there her Alienation, Release, or Confirmation with warranty shall not bind the heire.

11.H.7.cap.20. Vide Sect.595. See this Statute of 11.H.7.cap.20. well expounded. Lib.1.fol.176. in Sir Anth. Mildmayes Case. 3.& 4.Ph & Mar.Dier.146 Lib.3.fol.59.60.61.62. Lincolne Coll.Case.Tl.Com. fol.56. 20.Eliz. Dier 362. Dolt.& Students. 8.Eliz. Dier 248.19.Eliz. Dier 354 21.Eliz ibid.362.lib.3. fol.50.51.Sir George Brownes Case Lib.5.f.79. Fitzh.Case. 27.H.8.23.

To the Authorities quoted in the margent which may serue as Commentaries vpon the said Statute, I will only adde two cases, the one was. (f) A man seised of Lands in fee leuied a fine to the vse of himselfe for life, and after to the vse of his wife, and of the heires males of her bodie by him begotten for her Joynture, and had Issue male, and after he and his wife leuied a fine and suffered a common recouery, the Husband and wife died, and the Issue male entred by force of the said Statute of 11.H 7. And it was holden by the Justices of Assise (the case comming downe to be tryed by Nisi prius) that the entry of the Issue male was lawfull, and yet this case is out of the Letter of the Statute, for shee neither leuied the fine, &c. being sole, or with any other after-taken Husband, but is by her selfe with her Husband that made the Joynture. Sed qui hæret in litera hæret in cortice, and this case beeing in the same mischiefe is therefore within the remedy of the Statute by the intendement of the makers of the same to auoyd the disherison of heires who were prouided for by the said Joynture, and especially by the Husband himself that made the Joynture, which (as it was said) is a stronger case then the examples set downe in the Statute. The other was, (g) A man is seised of Lands

(f) Mich.13.Iac.inter Hawley & West in ecclesione firme in Commons Banco. Lincoln.

(g) Pasch.17.Eliz. in

Lands in the right of his wife, and they two leuy a fine, and the Conuſee grant and rendzeth the Land to the Husband and wife in ſpecialt tayle, the remaynder to the right heires of the wife, they haue iſſue, the Husband dieth, the wife taketh another Husband, and they two leuie a fine in fee, and the iſſue entreth, this is directly within the Letter of the Statute, and yet it is out of the meaning, because the state of the Land moued from the wife, ſo as it was the purchaſe of the Husband in letter, and not in meaning. But where the woman is Tenant for life by the gift or conueyance of any other, her alienation with warranty ſhall bind the heire at this day. So if a man bee Tenant for life (otherwiſe then as Tenant by the curteſie) and alien in fee with warranty, and dieth, this ſhall at this day bind the heire that hath the Reuerſion or Remaynder by the Common Law not holpen by any Statute. But all this is to be vnderſtood, vnleſſe the heire that hath the Reuerſion or Remaynder doth auoide the eſtate ſo alienen in the life of the Anceſtor for then the eſtate being auoyded, the warranty being annexed vnto the eſtate is auoyded alſo, whereof more ſhall be ſaid in this Chapter in his proper place. And therefore it is neceſſary for the heire in ſuch caſes to make an entry as ſoone as hee hath notice or probable ſuſpition of ſuch an alienation.

Com. Barres. Lation. ſ. which I my ſelfe haue read and obſerued.

Sect. 725.

As to the ſecond clauſe of the Statute of Gloceſter. There are two points of Law to bee obſerued.

First, That by the expreſſe purview of the Statute, if Aſſets doe after diſcend from the Father, then the Tenant ſhall haue recouery or reſtitution of the Lands of the Mother. But in a Formedon if at the time of the warranty pleaded no Aſſets be diſcended, whereby the Demandant recouereth, if after Aſſets diſcend, there the Tenant ſhall haue a Scire facias for the Aſſets, and not for the Land intayled. And the reaſon hereof is, that if in this caſe the Tenant ſhould be reſtored to the Land intayled, then if the Iſſue in Tayle alened the Aſſets, his Iſſue ſhould recouer in a Formedon, and therefore the Sages of the Law to preuent future occaſions of ſuits reſolued the ſaid diuerſities in the Caſes abouesaid vpon conſideration and conſtruction of the Statute of Gloceſter, and of the Statute De donis conditionalibus.

Pl. Com. Fulmerſtons caſe 110. a. Lib. 8. fol. 53. Syms Caſe.

Secondly, It is to be obſerued, that after Aſſets diſcended, the recouerie ſhall be by writ of iudgement which ſhall iſſue out of the Rolle of the Juſtices, &c. And here two things are to be declared and explayned. First, by what writ, &c. and that is cleere, viz. by Scire facias. But the ſecond is more difficult, and that is vpon what manner of iudgement the Scire facias is to be grounded: for explanation whereof it is to be vnderſtood, that if the Tenant will haue benefit of the Statute he muſt plead the warranty, and acknowledge the title of the demandant, and pray that the aduantage of the Statute may be ſaued vnto him. And then if after Aſſets diſcend, the Tenant vpon this Record ſhall haue a Scire facias. And if Aſſets diſcend but for part, he ſhall haue a Scire facias for ſo much. But if the Tenant plead the warranty, and plead further that Aſſets diſcended, &c. and the Demandant taketh iſſue that Aſſets diſcended not, &c. which iſſue is found for the Demandant, whereupon hee recouereth, the Tenant albeit Aſſets doe after diſcend, ſhall neuer haue a Scire facias vpon the ſaid Iudgement, for that by his falſe plea he hath loſt the benefit of the ſaid Statute.

Lib. 8. fol. 53. 54. Syms Caſe. Ibid 134. Mary Shpleys caſe.

Touching the third ſufficient hath beene ſpoken before. For the laſt it is to bee obſerued, That if the Husband be ſeiſed of Lands in the right of his wife, and maketh a feoffment in fee with warranty, the wife dieth and the Husband dieth, this warranty ſhall not binde the heire of the wife without Aſſets, albeit the Husband be not Tenant by the curteſie. But of this you ſhall reade more hereafter.

8. E. 2 tit. Garr. 81. 38. E. 3. 51.

In the meane time know this that the learning of warranties is one of the moſt curious and cunning Learnings of the Law, and of great vſe and conſequence.

Vide Sect. 725.

¶ *A demander aſcuns terres ou tenements.* A Warrantie may not only be annexed to Freeholds or Inheritances corporeall which paſſe by Liuery, as Houſes and Lands, but alſo to Freeholds or Inheritances incorporeall which lie in grant as Aduowſons, and to Rents, Commons, Eſtouers, and the like, which iſſue out of Lands or Tenements. And not only to Inheritances in eſſe, but alſo to Rents, Commons, Eſtouers, &c. newly created. As a man (ſome ſay) may grant a Rent, &c. out of Land for life, in tayle, or in fee with warranty, for although there can bee no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it iſſueth before the grant of the Rent, which Rent may bee auoyded by the recouery of the Land, in which caſe the Grantee may helpe himſelfe by a Warrantia cartæ vpon the eſpeciall matter. And ſo a warrantie in Law may extend to a Rent, &c. newly created, and therefore if a Rent newly created bee granted in Exchange for an Acre of Land, this Exchange is good, and euery Exchange implyeth a warranty in Law. And ſo a Rent newly created may bee granted for oweltie of partition.

2. H. 4. 13. 30. H 8. Dier 42.

Tempt E. 1. ad notſarement 16. 32. E. 1. Voucher 294. 30 E. 1. Exchange 16. 9. E. 4. 15. E. 4. 9. 29. Aſſ 13.

Vid Sect.741. 45.E.3.Voucher 72. 9.E.3.78. 18.E.3.55. 30.E.3.30. 21.H.7.9. 3.H.7.4.7.H.4.17. 10.E.4 9.b. 21.E.4.26. 14.H.8.6. 30.H.8.Dier 42.

A man seised of a Rent seeke issuing out of the Manor of Dale taketh a wife, the husband releaseth to the Terre tenant & warranteth Tenementa prædicta and dyeth, the wife bringeth a writ of Dower of the rent, the Terre tenant shall vouche, for that albeit the release enured by way of extinguishment, yet the warranty extended to it, and by warranting of the land all rents, &c. issuing out of the land, that are suspended or discharged at the time of the Warrante created, are warranted also.

Sect. 698.

¶ Garranty que cõmence per disseisin, &c. It is called a Warranty that commenceth by Disseisin, because regularly the conueyance whereunto the warranty is annexed doth worke a Disseisin.

In this Section Littleton putteth fiue examples of a Warranty commencing by Disseisin, viz. of a feoffment made with warranty by Tenant for yeares, by Tenant at will, by Tenant by Elegit, by Tenant by Statute Merchant, and by Tenant by Statute Staple: all these and the other examples that Littleton putteth of this kinde of Warranties in the succeeding Sections haue foure qualities.

7.E.3.41. 43.E.17. 50 E.3.12. Vid Sect.611.

First, that the Disseisin is done immediately to the heire that is to be bound, and yet if the father be Tenant for life, the remainder to the son in fee, the father by Couyn & consent maketh a Lease for yeares, to the end that the Lessee shall make a feoffment in fee, to whom the father shal release with warranty, and all is executed accordingly, the father dieth, this Warranty shall not binde, albeit the Disseisin was not done immediately to the sonne, for the feoffment of the Lessee is a disseisin to the father, who is particeps criminis. So it is if one brother make a gift in taile to another, and the vncle disseise the Donee, and infeoffeth another with Warranty, the vncle dieth and the Warranty discendeth vpon the Donor, and then the Donee dieth without

Lib.5.fo.79.b. Fitzherberts case.

31.E.3.tit.Garrantie 28.

¶ Garranty q̃ cõmence p̃ disseisin est en tiel forme, sicome lou il est pier et fits, et le fits purchase terre, &c. et lessa mesme la terre a son pier pur terme dans, & pier per son fait ent enfeoffa vn auter en fee, & obligea luy & ses heires a garranty, et le pier deuy, per que l' garranty discendist al fits, ceo garranty ne barrera my le fits, car nient obstant cel garrantie, le fits poit bien enter en la terre, ou auer vn assise enuers lalienee sil voit, pur ceo que l' garranty commence per disseisin, car quant le pier que nauoit estate forsque pur terme des ans, fist vn feoffment en fee, ceo fuit vn disseisin al fits del franktenemẽt que adonqz fuist en le fits. En mesme le maner est, si le fits lessa a le pier la terre a tener a volunt, & puis le pier fait vn feoffment oue garrantie,

WArrantie that commence by disseisin is in this manner, As where there is father and son, and the sonne purchaseth land, &c. and letteth the same land to his father for terme of years, and the father by his deed thereof infeoffeth another in fee, and binde him and his heires to Warranty, and the father dies, whereby the warranty discendeth to the son, this warranty shall not barre the son, for notwithstanding this warranty the sonne may well enter into the land, or haue an Assise against the Alienee if he will, because the Warranty commenced by disseisin, for when the father which had but an estate for term of yeares made a feoffment in fee, this was a disseisin to the son of the freehold which then was in the sonne. In the same manner it is if the son letteth to the fa-

garrantie, &c. Et sicome est dit de pier, issint poit estre dit de chescun auter auncester, &c. En mesme le maner est, si tenaunt per Elegit, tenant per Statute Merchant, ou tenant per Statute de le Staple fait feoffment en fee ouesque garranty, ceo ne barrera my heire que doit auer la terre, pur ceo que tiels garranties cõmencerent per disseisin.

ther the land to hold at will, & after the father make a feoffment with warranty, &c. And as it is said of the father, so it may be said of euery other ancester &c. In the same māner is it, if tenant by *Elegit*, tenant by Statute Merchant or tenant by Statute staple make a feoffment in fee with warranty, this shall not bar the heire which ought to haue the land, because such warranties cõmence by disseisin.

sine, albeit the disseisin was done to the Donee and not to the Donor, yet the warranty shall not binde him. The father, the sonne and a third person are ioyntenants in fee, the father maketh a feoffment in fee of the whole with warranty, and dyeth, the sonne dyeth, the third person shall not only auoide the feoffment for his owne part, but also for the part of the sonne, and hee shall take aduantage that the warranty commenced by Disseisin, though the Disseisin was done to another.

The second quality appearing in Littletons examples is, that the warranty and Disseisin are simul & semel both at one and the same time. (y) And yet if a man commit a Disseisin of intent to make a feoffment in fee with warrantie, albeit he make the feoffment many yeares after the disseisin, notwithstanding because the warranty was done to that intent and purpose, the Law shall adiudge vpon the whole matter, and by the intent couple the Disseisin and the warranty together.

(y) 19.H.8.12. lib.9. fo 79.b. Firth.case.

The third quality is that the warranty that commenceth by Disseisin by all these examples (if it should binde) should binde as a Collaterall Warranty, and therefore commencing by Disseisin shall not binde at all.

¶ *Ne barrera my le heire, &c.* For by the Authority of our Author himselfe a Lessee for yeares may make a feoffment, and by his feoffment a fee simple shall passe, so as albeit as to the Lessor it worketh by disseisin, yet betweene the parties the warranty annexed to such estate standeth good: vpon which the Feoffee may vouche the Feoffor or his heires as by force of a lineall warranty. And therefore if a Lessee for yeares or Tenant by Elegit, &c. or a Disseisor incontinent make a Feoffment in fee with warranty, if the Feoffee be impleaded, he shall vouche the Feoffor, and after him his heire also, because this is a Couenant reall, which binde him and his heires to recompence in value, if they haue assets by discent to recompence, for there is a Feoffment de facto, and a Feoffment de iure: (*) And a Feoffment de facto made by them that haue such interest or possession, as is aforesaid, is good betweene the parties, and against all men, but only against him, that hath right. And therefore if the Lord be Gardeine of the land, or if the Tenant maketh a Lease to the Lord for yeares, or if the Lord be Tenant by Statute Merchant or Staple, or by Elegit of the tenancie, and make a Feoffment in fee, he hereby doth extinguish his Seigniory, although hauing regard to the Lessor it is a Disseisin.

Vid.Sect.611.699. Bracton fo.216.223.224. Fleta lib.4 ca.17.1.2. Britton cap. Disseisin. 50 E.3.12 b. 8.H.7.5. 7.E.3.11. 14.E.3. Feoffments en ass 67. 18 E.3. Issue 36. 4.E.2 briefe 790. 19.E.2. Ass. 402. 43.E.3.9. 7.E.3.41. 43.E.3. Diss. 5. 3.E.4.17. 12.E.4.12. 10.E.4.18. F.N.B.201. Lib.3.fo.78. in Fermors case.

(*) *Tenus E.1. Counterplea de Voucher 126. 50.E.3.Iordan 124. Vid W.1.cap.48. in the second part of the Institutes.*

The fourth quality is a Disseisin, but that is put for an example, and the rather for that it is most vsuall and frequent, but a Warranty that commenceth by abatement or intrusion (that is when the abatement or intrusion is made of intent to make a Feoffment in fee with Warrantie) shall not binde the right heire, no more then a Warrantie that commenceth by Disseisin, because all doe commence by wrong. And so it is if the Tenant dyeth without heire, and an Ancestor of the Lord enter before the entry of the Lord, and make a Feoffment in fee with Warranty, and dyeth, this warranty shall not binde the Lord, because it commenceth by wrong, being in nature of an Abatement. Et sic de similibus.

Sect. 699.

¶ Item si gardein en Chiualrie, ou gardein en Socage fait

Also if Gardeine in Chiualrie or Gardeine in Socage make

fait vn feoffement en fee, ou ẽ fee taile, ou pur terme de vie ouesqꝫ garranty, &c. tiels garranties ne ſont pas barres a les heires, as quix les terres ſerront diſcendꝰ, pur ceo que ils commence per diſſeiſin.

a Feoffement in Fee, or in Fee taile, or for life, with Warrantie, &c. ſuch Warranties are not barres to the Heyres to whome the Lands ſhall bee diſcended, becauſe they commence by Diſſeiſin.

16.E.3.Gar.20.8.Aſſ.2. 43.E.3.7. and the Books above ſayd. Vi.Sect.698.

¶ HEre Littleton addeth the Caſe of Gardeine in Chiualrie; and Gardein in Socage; and Gardeine becauſe of Nurture is alſo in the ſame caſe.

Sect. 700.

23.Aſſ.8. 13 E.3. Gar.24. 25.37. 22.H.6.51.8.H.7.6.

A *Auer & tener a eux iointmẽt, &c.* This is to be intended of a toynt purchaſe in fee, for if the purchaſe were to the father and the ſonne, and the heyres of the ſonne, and the father maketh a Feoffement in Fee with warrantie, if the ſonne entreth in the life of the Father, and the Feoffee re-enter, the father dieth, the ſonne ſhal haue an Aſſiſe of the whole, and ſo is the Booke of 22 H.6. to be vnderſtood. But if the ſonne had not entred in the life of the father, then for the fathers moitie it had beene a bar to the ſonne, for that therein he had an eſtate for life, and therefore the warrantie as to that moitie, had beene collaterall to the ſonne, and by Diſſeiſin for the ſonnes moitie, and ſo a warrantie defeated in part, and ſtand good in part. And this appeareth by the example that Littleton hath put. But if the purchaſe had been to the father & ſonne, and to the heires of the Father, then the entrie of the ſonne in the life of the father, as to the auoydance of the warrantie, had not auailed him, becauſe his father lawfully conueyed away his moitie.

¶ Item ſi le pier et le fits purchaſe certaine Terres ou tenements, a auer et tener a eux iointmẽt, &c. et puis le pier alien lentier a vn auter, et oblige luy et ſes heires a garrantie, &c. et puis le pier deuie, cel Garrantie ne barrera my le fits de le moitie que a luy affiert de les dits terres ou tenemẽts, pur ceo que quaunt a cel moitie que affiert a le fits, le Garranty commence per Diſſeiſin, &c.

ALſo if Father and Sonne purchaſe certaine Lands or Tenements, To haue and to hold to them iointly, &c. and after the Father alien the whole to another, and binde him and his Heyres to Warrantie, &c. and after the Father dieth, this Warrantie ſhall not barre the ſonne of the moitie that belõgs to him of the ſaid Lands or Tenements, becauſe as to that moitie which belongs to the Sonne, the warrantie commences by Diſſeiſin, &c.

Temps E.1. Vouch. 207. 39. E.3. 36 Iohn London fol. 14. H.6

If a man of full age and an Infant make a Feoffement in Fee with warrantie, this warrantie is not voyd in part, and good in part, but it is good for the whole againſt the man of full age, and voyd againſt the Infant: for albeit the Feoffement of an Infant paſſing by Liuerie of Seiſin bee voydable, yet his warrantie which taketh effect onely by Deed, is meerly voyd.

Sect.

Section 701.

¶ ITem ſi A. ô B. ſoit ſeiſie dun meſe, et F. de G. que nul droit ad dentrer en meſme le meaſe, claimaunt meſme le meaſe, a tener a luy et a ſes heires, entra en meſme le meaſe, mes le dit A. de B. adonque eſt continualmẽt demurrant en meſme le meaſe: En ceſt cas le poſſeſſion ô franktenement ſerra tout temps adiudge en A de B. et nemy en F. de G. pur ceo que en tiel caſe lou deux sõt en vn meaſe, ou auters Tenements, et lun claima per lun title, et lauter p lauter title, la Ley adiudgera celuy en poſſeſſion que ad droit dauer le poſſeſſion de meſmes les Tenements. Mes ſi en le caſe auantdit, l' dit F. de G. fait vn Feoffment a certaine Barretrors et extorcioners en le pais, p̃ maintenance de eux auer, De meſme le meaſe per vn fait de Feoffement oue garrantie, per force de quel le dit A. de B.

ALſo if A. of B. bee ſeiſed of a Meſe, and F. of G. that no right hath to enter into the ſame Meſe, claiming the ſayde Meſe to hold to him and to his heires, entreth into the ſayd Meſe, but the ſame A. of B. is then continually abiding in the ſame Meaſe: In this Caſe the poſſeſſion of the Free-hold ſhall bee alwayes adiudged in A. of B. and not in F. of G. becauſe in ſuch Caſe where two bee in one Houſe or other Tenements, and the one claimeth by one Title, and the other by another Title, the Law ſhal adiudge him in poſſeſſion, that hath right to haue the poſſeſſion of the ſame tenements. But if in the Caſe aforeſayd, the ſayde F. of G. make a Feoffement to certaine Barrettors and Extortioners in the Countrie, to haue maintenance from thẽ of the ſayd houſe, by a Deed of Feoffment with Warrantie, by force whereof the ſaid

¶ *Ou deux ſont en vn meſe, &c. & lun claima per lun title, & lauter per auter title, &c.* For the rule is, Duo non poſſunt in ſolido vnam rem poſſidere. 19.H.6.fo.28.b. 3 Nevill.

Theſe words of our Author be ſignificant and materiall: (h) for if a man hath iſſue two daughters Baſtard eigne and Mulier puiſne, and die ſeiſed, and they both enter generally, the ſole poſſeſſion ſhal not be adiudged onely in the Mulier, becauſe they both claime by one and the ſame title, and not one by one title, and the other by another title, as our Author here ſaith. (h) 17.E.3.59.11.Aſſ.

(i) If the Tenaunt in an aſſiſe of an houſe deſire the Plaintife to dine with him in the houſe, which the Plaintif doth accordingly, and ſo they be both in the houſe, and in truth one pretendeth one title, and the other another title, yet the Law in this caſe ſhall not adiudge the poſſeſſion in him that right hath, becauſe our Author here ſaith, he claimed not his right, and it ſhould be to his preiudice if the Law ſhould adiudge him in poſſeſſion; and a Treſpaſſer he cannot be, becauſe he was inuited by the Tenant in the Aſſiſe. (i) Pl.Com.91. the Caſe of Henry Lanes Aſſ.

¶ *Barretors.* A Barretor is a common mouer and exciter or maintainer of ſuits, quarrells, or parts, either in Courts or elſewhere in the Countrie. In Courts, as in Courts of Record, or not of Record, as in the Countie, Hundred, or other inferiour Courts. In the Countrie in three manners, Firſt, in diſturbance of the Peace. Secondly, in taking or keeping of poſſeſſions of lands in controuerſie, not only by force, but alſo by ſubtil-

See the Indictment of a common Barretor. W.1.ca 18. & 32 40.E.3.33. Li.8.fo.36.b. Caſe de Barretry.

tie

tie and a deceit, and moſt commonly in ſuppreſſion of truth and right. Thirdly, by falſe inuentions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow betweene neighbours.

33 E.1. Stat. de Conſpiracie. Ls.8 vb. ſup.

¶ *Barrettor* is deriued of this word (Barret) which ſignifieth not onely a wrangling ſuit, but alſo ſuch brawles and quarrels in the Countrie, as are aforeſayd.

Pl.Com fo.64. Ls.10 fo.101.102. Beauſages Caſe.

¶ *Extortioners.* Extortion in his proper ſence is a great miſpriſion by wreſting or vnlawfully taking by any Officer by colour of his Office any money or valuable thing of or from any man, either that is not due, or more than is due, or before it be due, Quod non eſt debitum, vel quod eſt vltra debitum, vel ante tempus quod eſt debitum: For this it is to be knowne, that it is prouided by the (l) Statute of W.1. That no Sheriffe nor any other Miniſter of the King, ſhall take any reward for doing of his Office, but onely that which the King alloweth him, vpon paine that he ſhall render double to the partie, and be puniſhed at the Kings pleaſure. And this was the antient Common Law, and was puniſhable by fines and impriſonment, but the Statute added the aforeſayd penalties. But ſome latter Statutes hauing permitted them to take in ſome caſes, by colour thereof, the Kings Officers and Miniſters, as Sheriffes, Coroners, Eſcheators, Feodaries, Gaolers, and the like, doe offend in moſt caſes; and ſeeing this Act yet ſtandeth in force, they cannot take any thing but where, and ſo farre as latter Statutes haue allowed vnto them. But yet ſuch reaſonable Fees as haue beene allowed by the Courts of Iuſtice of antient time to inferiour Miniſters and Attendants of Courts for their labour and attendance, if it bee aſked and taken of the Subiect, is no extortion.

(l) W.1.c.26. & c.W.1.c.10 42.E.3.5.27. Aſſ.14. Pl.Com.68.

23.H.6.ca.10. 33.H.6.22. 21.H.7.17. Staun.49. 3.E.3.Cor.372.

And all this was reſolued (n) by the whole Court of Kings Bench, betweene Shurley Plaintife, and Packer Deputie of one of the Sheriffes of London, in an Action vpon the Caſe in the Kings Bench.

(n) Hil.13.Ia.Reg.

See the Statute of 21.H.8. cap. 5. ſetting downe the Fees of Ordinaries, Regiſters, and other Officers, in certaine Caſes, and many other Statutes, as for example the Statute of 19.H.7.cap.8. againſt taking of Shewage (that is, taking of any thing for ſhewing of Wares and Merchandiſes that be truly cuſtomed to the King before) and the like.

Pl.Com.in Dine & Manningbams caſe. Mir.ca.5.§.1.

Of this crime it is ſayd, That it is no ther othan Robberie: And another ſaith, That it is more odious than Robberie, for Robberie is apparant, and hath the face of a crime; but Extortion puts on the viſure of Vertue, for expedition of Iuſtice, and the like, and it is euer accompanied with that grieuous ſinne of periurie.

7.E.4.21.

But largely Extortion is taken for any oppreſſion by extort power, or by colour or pretence of right, and ſo Littleton taketh it in this place. Extortio is deriued from the Verbe Extorquee, and it is called Crimen expilationis or concuſſionis: And here Barrettors and Extortioners are put but for examples, for if the Feoffement bee made to any other perſon or perſons, the Law is all one.

ne oſaſt pas demurrer en le Meaſe, mes alaſt hors de le meaſe, ceſt garranty commence per Diſſeiſin, pur ceo que tiel Feoffement fuit la cauſe que le dit A. de B. relinquiſt le poſſeſſion de meſme le Meaſe.

A. of B. dare not abide in the Houſe, but goeth out of the ſame, this Warrantie commenceth by Diſſeiſin, becauſe ſuch Feoffement was the cauſe that the ſayde A. of B. relinquiſhed the poſſeſſion of the ſame Houſe.

¶ *Pur maintenance de eux auer.* **Maintenance**, Manutenentia is deriued of the Verbe Manutenere, and ſignifieth in Law, a taking in hand, bearing vp or vpholding of quarrels and ſides, to the diſturbance or hinderance of common right; Culpa eſt rei ſe immiſcere ad ſe non pertinenti, and ſo is twofold, One in the Countrie, and Another in the Court. For quarrels and ſides in the Court (k) the Statutes haue inflicted grieuous puniſhments. But this kind of maintenance of quarrels and ſides in the Countrie, is puniſhable onely at the ſuit of the King, (r) as it hath beene reſolued. And this Maintenance is called Manutenentia, or Manutentio ruralis, for example, as to take poſſeſſions, or to keep poſſeſſions, whereof Littleton here ſpeaketh, or the like.

(k) 1.E.3.ca.14. 20.E.3.ca.4.5.

(r) Mich.7.Ia. in the Starre-Chamber.

The other is called Curialis, becauſe it is done pendente placito, in the Courts of Iuſtice, and this was an Offence at the Common Law, and is threefold.

33.E.1.Stat.2.in fine. Regiſt.183. 6.E.3.33.22.H.6.7. 9.H.7.22.

First, To maintaine, to haue part of the Land, or any thing out of the Land, or part of the Debt, or other thing in Plea or Suit, and this is called Cambipartia, Champertie.

The ſecond is, When one maintaineth the one ſide, without hauing any part of the thing in Plea

Plea or Suit, and this maintenance is two-fold, generall maintenance, and speciall maintenance, whereof you shall reade at large in our Books, which were too long here to be inserted.

The third is when (u) one laboureth the Jurie, if it bee but to appeare, or if hee instruct them, or put them in feare, or the like, he is a mayntainer, & hee is in Law called an Embracer or, and an Action of Mayntenance lyeth against him, and if hee take monie a decies tantum may be brought against him. And whither the Jury passe for his side or no, or whither the Jurie give any verdict at all, yet shall he be punished as a Mayntainer or Embracer or eyther at the suite of the King or party.

30. Ass. 5. 19. E. 4. 3. 20. H 6. 12 34. H. 6. 2. 11. H 6. 1. 8. H. 5. 8. 10. E. 4. 19. W 1 ca. 15. 28. W. 2. cap. 49. ... tic super Cart. cap 11. F. N. B. 171. 172. Mirror cap. 1 §. 5. (u) 13 H. 4 16 b. F. N. B. 171. 11. H. 6. 10. 37. H. 6. 31

Here in this case that Littleton putteth the feoffment is void by the Statute (a) of 1. R. 2. for thereby it is enacted, that feoffments made for Mayntenance shall bee holden for none, and of no value, so as Littleton putteth his case at the Common Law, for hee seemeth to allow the feoffment where he saith, tiel feoffment fuit le cause, &c. but some haue said that the feoffment is not void betweene the Feoffor and Feoffee, but to him that right hath.

(a) 1. R. 2. cap. 9. Vid. 27. H. 8. fol. 23.

Now since Littleton wrote there is a notable Statute (b) made in suppression of the causes of vnlawfull mayntenance (which is the most dangerous enemie that Justice hath) the effect of which statute is.

(b) 32. H. 8. cap. 9.

First, That no person shall bargaine, buy or sell, or obtaine any pretensed Rights or Titles.

Secondly, Or take, promise, grant, or couenant to haue any Right, or Title of any person in or to any Lands, Tenements, or Hereditaments, but if such person which so shall bargaine, &c. their Ancestors, or they by whom hee or they clayme the same haue beene in possession of the same, or of the Reuersion or Remaynder thereof, or taken the Rents or Profits thereof by the space of one whole yeare, &c. vpon paine to forfeit the whole value of the Lands, &c. and the buyer or taker, &c. knowing the same, to forfeit also the value.

Thirdly, Prouided that it shall be lawfull for any person being in lawfull possession by taking of the yeerely Farme, Rents or Profits to obtaine and get the pretensed Right, or Title, &c. of any Lands whereof he or they shall be in lawfull possession.

For the better vnderstanding of which Statute, you must obserue, that title or right may be pretensed two manner of wayes.

First, when it is meerely in pretence or supposition, and nothing in veritie.

Secondly, When it is a good right or title in verity, and made pretensed by the act of the partie, and both these are within the said Statute; for example, If A bee lawfull Owner of Land and is in possession, B that hath no right thereunto granteth to or contracteth for the land with another, the Grantor and the Grantee (albeit the grant bee meerely void) are within the danger of the Statute. For B hath no right at all but only in pretence. If A bee disseised in this case A. hath a good lawfull right, yet if A being out of possession granteth to or contracteth for the Land with another, hee hath now made his good right of entrie pretensed within the Statute, and both the Grantor and Grantee within the danger thereof. A fortiori of a right in action. Quod nota.

Pl. Com. fol. 80. b. Partridges Case

It is further to bee knowne, that a right or title may bee considered three manner of wayes.

First, As it is naked and without possession. Secondly, when the absolute right commeth by Release or otherwise to a wrongfull possession, and no third person hath eyther Ius proprietatis, or Ius possessionis. The third, when he hath a good right, and a wrongfull possession. As to the first, somewhat hath beene said, and more shall bee said hereafter. As to the second, taking the former example, if A be disseised, and the Disseisee release vnto him, hee may presently sell, grant, or contract for the Land, and need not tarrie a yeare, for it is a rule vpon this Statute, that whosoeuer hath the absolute Ownership of any Land, Tenements, or Hereditaments (as in this case the Disseisor hath) there such Owner may at his pleasure bargaine, grant, or contract for the Land, for no person can thereby be prejudiced or grieued. And so if a man morgage his Land, and after redeeme the same, or if a man recouer Land vpon a former title, or be remitted to an ancient right, he may at any time bargaine, grant, or contract for the Land for the reason aforesaid. As to the third, if in the case aforesaid the Disseisor dieth seised, and A the Disseisee entreth, and disseise the heire of the Disseisor, albeit he hath an ancient right, yet seeing the possession is vnlawfull, if hee bargaine or contract for the Land before hee hath beene in possession by the space of a yeare, hee is within the danger of the Statute, because the heire of the Disseisor hath right to the possession, and he is thereby grieued, & sic de similibus, and albeit he that hath a pretensed right (and none in veritie) getteth the possession wrongfully, yet the Statute extendeth vnto him, as well as where he is out of possession.

Pl. Com Partridges case supra. 6 E. 6. Brook Tit. Maintenance. 38.

Note the words of the Statute be (any pretensed right) therefore a Lease for yeares is within the Statute, for the Statute saith not (the right) but any right) and the offendor shall forfeit the whole value of the Land. And where the Statute speaketh of rights in the plural number, yet any one right is within the Statute. (a) But yet if a man make a lease for yeeres to another to the intent to try the title in an eiectione firme that is out of the Statute,

27. Eliz. Dier 374. Pl. Com. Partridges case f. 87 (a) Mich. 30. & 31. Eliz. 2811. inter Finch & Cockham in Cõ Banco.

because it is in a kind of course of Law, but if it be made to a great man, or any other to sway or countenance the cause, that is within this Statute.

(b) Lib.4.fol.26. Copihold Cases.

Also the Statute speaks (of any right or title to any Land, &c.) (b) A customarie right or a pretence thereof to Lands holden by Copie is within this Statute.

The said proviso (which is rather added for explanation then of any necessitie) extendeth only to a pretensed right or title, and to a good and cleere right, and therefore without question, any that hath a iust and lawful estate may obtaine any pretensed right by release or otherwise, for that cannot bee to the prejudice of any, nay, as hath beene said, a Disseisee for that hath a wrongfull estate may obtaine a release of the Disseisee, and that is not within the body of the Act, and consequently standeth not in need of any proviso to protect him.

6.E.6.tit.maintenance Brooke 38.

(c) 34.H.8.Dier 52.

And therefore (c) if there be Tenant for life, the Remaynder in fee by lawfull and iust title, he in the Remaynder may obtaine and get the pretensed right or title of any stranger, not only for that the particular Estate and the Remaynder are all one, but for that it is a meane to extinguish the seeds of troubles and suites, and cannot be to the prejudice of any, as hath beene said. And where the Statute saith, (being in lawful possession by taking the yearly Rent, &c.) those words are but explanatorie, and put for example, for howsoever hee be lawfully seised in possession, Reuersion, or Remaynder, it sufficeth though hee neuer tooke profit. But the matter obseruable vpon this Proviso, which is worthy of obseruation, is, that if a Disseisor make a Lease for life, liues, or yeares, the Remaynder for life, in tayle, or in fee, hee in Remaynder cannot take a Promise or Couenant, that when the Disseisee hath entred vpon the Land or recouered the same, that then hee should conuey the Land to any of them in Remaynder thereby to auoid the particular estate, or the interest or estate of any other, for the words of the Proviso be, (buy, obtaine, get or haue by any reasonable way or meane) and that is not by promise or couenant to conuey the Land after entry or recouery, for that is neyther lawfull being against the expresse purview of the bodie of the Act, and not reasonable, because it is to the prejudice of a third person. But the reasonable way or means intended by the Statute is by Release or Confirmation, or such Conueyances as amount to as much, and this agreeth with the letter of the Law, viz. the pretensed Right or Title of any other person, and Rights and Titles are by Release or Confirmation, as by reasonable wayes and meanes lawfully transferred and extinct, and the words of Promise or Couenant, &c. which are prohibited by the body of the Act, are omitted in the Proviso.

¶ *Relinquist le possession, &c.* This must bee vnderstood, that before liuery of seisin vpon the feoffment, A de B departed out of the house, for otherwise the liuery and seisin should be void, because A de B was in possession. And Littleton here saith, Per vn fait de feoffment, so as albeit the Deed were made before the departure it is not material, but the departure must be before the liuery of seisin, for that doth worke the disseisin. And yet that which Littleton saith is true, that the feoffment was the cause that he relinquished his possession, for otherwise he would not haue done it.

But admit that A de B had departed for any other cause, yet if F de G enter and enfeoffe certaine Warretors or Extortioners, or any other with warrantie, this is a warrantie that commenceth by disseisin, for that the feoffment worketh a disseisin.

Sect. 702.

See before in the Chapter of Releases.

¶ This doth explane that which hath beene said before. And albeit Littleton vseth the words (and incontinently thereof make a Feoffment) and that in this case of Littleton the Disseisin & Feoffment were made quasi vno tempore) yet if the Disseisin were made to the intent to make a feoffment with warranty, albeit the Feoffment be long after, this (as hath beene said) is a warranty

46.E.3.6.

¶ Item si homme que nul droit ad dentrer en auters tenements, entra en mesmes les tenements, & incontinēt et fait vn feoffment as auters per son fait oue garranty, & deliuer a eux seisin, cel garranty commence per disseisin

Also if a man which hath no right to enter into other tenements enter into the same tenements, & incontinently make a feoffment therof to others by his deed with warranty & deliuer to them seisin, this warranty comence

fin, pur ceo que le disseisin et le feoffment ount faits quasi vno tempore. Et q̃ ceo est ley, poiez veier en vn plee M.11.Ed.3.en vn briefe de Formedon en le reuerter.

by disseisin, because the disseisin and feoffment were made as it were at one time. And that this is lawe you may see in a plee *M.11 E.3.* in a writ of *Formedon* in the reuerter.

that commenceth by Disseisin.

¶ *Mich.11. E.3.* This is mistaken and should be (d) 31.E 3. and so is the originall, which case you shall see in Master Fitzherberts Abridgement, for there is no booke at large of that yeare, Hereby you may perceiue that learned men looke not only to the cases reported, but vnto Records, as you may see Littleton did, for Fitzherb. put this case in print long after, as elsewhere hath beene shewed.

(d) 31.E.3.tit.Garr.28.

Sect. 703.

¶ Warranty lineal est, lou home seisie de terres en fee, fait feoffment per son fait a vn auter, & obliga luy et ses heires a garrantie, et ad issue et mourust, et le garrantie discendist a son issue, ceo est lineal garranty. Et la cause pur ceo q̃ est dit lineal garrantie, nest pur ceo que le garranty discendist de le pier a son heire, mes la cause est pur ceo que si nul tiel fait oue garranty fuisoit fait per le pier, donque le droit ô les tenemẽts discenderoit al heire, et lheire conueyeroit le discent de son pier, &c.

WArranty lineall is where a man seised of lands in fee, maketh a feoffment by his Deed to another, & bindes himselfe & his heires to warranty, and hath issue and die, and the Warranty discend to his issue, this is a lineal warranty. And the cause why this is called lineall warranty is not because the warrãty discendeth from the father to his heire, but the cause is for that if no such deed with warranty had beene made by the father, then the right of the tenements should discend to the heire, and the heire should conuey the discent frõ his father, &c.

¶ *Arranty lineal, &c.* A Warranty lineall is a Couenant reall annexed to the land by him which either was owner, or might haue inherited the land, and from whom his heire lineall or collaterall might by possibility haue claimed the land as heire from him that made the warranty, whereof Littleton himselfe putteth diuers cases, which shall bee explained in their proper places. And in this case put in this Section Littleton (once for all) sheweth, that the reason of the example here put, is because if no such alienation with Warranty (for so is Littleton to be intended) had beene made, the very lands had discended to the heire, so as the case being put of lands in fee simple, the alienation without the warranty had barred the heire. And note that it is called a lineall warranty, not because it must discend vpon the lineall heire, for bee the heire lineall or collaterall, if by possibility he might claime the land from him that made the warranty, it is lineall, hauing regard to the Warrantie, and title of the land. And also it is called lineall, in respect that the Warranty made by him that had no right or possibility of right to the land is called Collaterall, in regard that it is collaterall to the title of the land. And it is also to be obserued, that in all the cases that Littleton hath put or shall put the lineall or collaterall warranty doth binde the heire, and therefore the successor clayming in another right, shall not be bound by the warranty of any naturall Ancestor. For which cause (c) in a Iuris vtrum brought by a Parson of a Church, the collaterall warranty of his Ancestor is no barre, for that hee demandeth the land in the right of his Church in his politique capacitie, and the warrantie descendeth on him in his naturall capacitie. (d) But some haue holden that if a Parson bring an Assise, that a Collaterall warranty of

35.E.3.Garr.73.

(c) 27.H.6.Garr.48.

(d) 34.E.3.Garr.71.

his Ancestor shall binde him, and their reason is, for that the Assise is brought of his possession and seisin, and he shall recouer the meane profits to his owne vse. But seeing he is seised of the freehold, whereof the Assise is brought in jure Ecclesiæ, which is in another right, then the Warranty, it seemeth that it should not be any barre in the Assise. The like Law is of a Bishop, Archdeacon, Deane, Master of an Hospitall, and the like, of their sole possessions, and of the Prebend, Vicar, and the like.

(*) 45.Ass.6. 6.E.3.56. Dr.Com.234.& 553.554.

¶ *Et oblige luy & ses heires.* * King H.3. gaue a Mannor to Edmund Earle of Cornwall, and to the heires of his body, sauing the possibility of Reuerter, and dyed, The Earle before the statute of W.2.cap.1. De donis conditionalibus by Deede gaue the said Mannor to another in fee with warranty in exchange for another Mannor, and after the said Statute in the 28. yeare of E.1. dyeth without issue, leauing Assets in fee simple. which warranty and Assets descended vpon King E.1. as Cosin germaine, and heire of the said Earle, viz. sonne and heire of King Henry the third, brother of Richard Earle of Cornwall, father of the said Earle Edmund. And it was adiudged, that the King as heire to the said Earle Edmund, was by the said warranty and Assets barred of the possibility of Reuerter, which he had expectant vpon the said gift, albeit the Warranty and Assets descended vpon the naturall body of King E.1. as heire to a subiect, and King E.1. claymed the said Mannor, as in his Reuerter in jure Coronæ in the capacity of his body politique, in which right he was seised before the gift. In this case how by the death of the said Earle Edmund without issue, the Kings title by Reuerter, and the warranty, and Assets came together, and that the warranty was collaterall, yet the King shall not be barred without Assets as a subiect shall be, and many other things are to be obserued in this case which the learned reader will obserue.

Vid.27.H.6.Garr.48. 34.E.3.Garr.71.

Vid.Sect.711.712.

Sect.704.705.

¶ Car si soit pier & fits & le fits purchase terres en fee, et le pier de c̄ disseisist son fits, et aliena a vn auter en fee per son fait: et per mesme le fait oblige luy et ses heires a garranter mesmes les tenements, &c. et le pier morust, ore est le fits barre dauer les dits tenements, car il ne poit per ascun suit, ne per auter meane de la ley, auer mesmes les terres per cause del dit garranty, et ceo est vn collateral garranty, et vncore le garranty discendist lynealment de le pier a le fits.

FOr if there be father and sonne, and the sonne purchase lands in fee, and the father of this disseiseth his sonne and alieneth to another in fee by his Deede, and by the same deed binde him and his heires to warrant the same tenements, &c. and the father dieth, now is the son barred to haue the said tenements, for hee cannot by any suite, nor by other meane of law haue the same lands by cause of the said warranty. And this is a collaterall Warranty, and yet the Warranty discendeth lineally from the father to the sonne.

Sect.705.

¶ Mes pur ceo que si nul tiel fait oue garr̄ vst estre fait, le fits en nul maner puisoit conueyer le title que il ad a les tenements de son pier a luy, entant que son pier nauoit ascun estate

BVt becausse if no such Deed with Warranty had beene made, the sonne in no manner could conuey the title which hee hath to the tenements from his father vnto him, inasmuch as his fa-

eſtate en droit en les tenements, pur ceo tiel garrantie eſt appel collateral garranty, entant que celuy que fiſt le garranty eſt collateral a le title de les tenemẽts, et ceo eſt a tant adire que ceſtuy a que le garranty diſcendiſt, ne puiſſoit a luy conueier l'title que il ad de les tenements per my ceſtuy que fiſt le garrantie en cas que nul tiel garrantie fuit fait.

ther had no eſtate in right in the lands, wherefore ſuch Warranty is called Collaterall warranty, inaſmuch, as he that maketh the warranty is collateral to the title of the tenements, and this is as much to ſay, as hee to whom the warranty deſcendeth, could not conuey to him the title which hee hath in the tenements by him that made the warranty, in caſe that no ſuch warranty were made.

CHere Littleton putteth an example, proouing that it is not called Lineall, becauſe it deſcendeth lineally from the father to the ſonne, for in this caſe the warranty deſcendeth lineally, and yet is a collaterall warranty. In this example you muſt intend that the Diſſeiſin was not of intent to alien with warranty to barre the ſonne, but here the Diſſeiſin being done to the ſonne, without any ſuch intent, the alienation afterwards with warranty doth barre the ſonne, becauſe that albeit the Warranty doth lineally diſcend, yet ſeeing the title is Collaterall, that is, that the ſonne claymeth not the land as heire to his father, therefore in reſpect of the title it is a Collaterall warranty. And thus doth Littleton agree (e) with the Authority of our bookes. So as the diuerſities doe ſtand thus. Firſt, where the Diſſeiſin and feoffment are vno tempore, and where at ſeuerall times. Secondly, where the Diſſeiſin is with intent to alien with warranty, and where the Diſſeiſin is made without ſuch intent, and the alienation with warranty afterwards made.

5.E.3.14. 46.E.3.6. 10.H.8.12. 8.R.2.Gar.100. Vid.Sect.716.

(e) 16.E.3.6. 5.E.3.14. 19.H.8.12.

Sect. 706.

CItem ſi ſoit aiel, pier, et fits, et le aiel ſoit diſſeiſie, en que poſſeſſion le pier releas p ſon fait oue garrantie, &c. et mo-ruſt, et puis laiel moruſt, ore le fits eſt barre dauer les tenements per le garranty del pier. Et ceo eſt appel lineal garrantie, pur ceo que ſi nul tiel garranty fuit, le fits ne puiſſoit conueyer le droit de les tenements a luy, ne monſtre coment il eſt heire al Aiel forſ-

ALſo if there bee grandfather father and ſon, and the grandfather is diſſeiſed, in whoſe poſſeſſion the father releaſeth by his Deed with warranty, &c. and dieth, and after the grandfather dieth, now the ſon is barred to haue the tenements by the warranty of the father. And this is called a lineal warranty, becauſe if no ſuch warranty were the ſon could not conuey the right of the tenements to him, nor

CHere Littleton putteth an example where the ſon muſt clayme the land as heire to his grandfather, and yet becauſe hee cannot make himſelfe heire to his grandfather but by his father, it is lineall.

1.H.4.33. 35.E.3.Gar.73.

And it is to bee obſerued that the warranty in this caſe deſcended vpon the ſon, before the diſcent of the right, which happened by the death of the grandfather in whoſe the right was, vide Littleton cap. de Releaſes, and after in this Chapter, Sect. 707. & 741.

C *Pier releaſe per ſon fait one garranty.*

(f) It is to be knowne that vpon euery conueyance of Lands, Tenements, or Hereditaments, as vpon Fines, Feoffments, Gifts, &c. Releaſes and Confirmations made to the Tenant of the land,

(f) 14.E.3.Vouch 108. 16.E.3.ibid.87. 18.E.3.ibid.6. 10.E.3.58. 21.E.3.27. 11.H.4.22. 44.E.3.Cont. de Vouch.22. 12.H.7.1. Vid.Sect.733.738.745.

land, a warrantie may bee made, albeit he that makes the Releafe or Confirmation, hath no right to the Land, &c. but ſome do hold, That by releaſe or confirmation, where there is no eſtate created, or tranſmutation of poſſeſſion, a warrantie cannot be made to the Aſſignee.

que per meane del pier.

ſhew how hee is heire to the grandfather but by means of the father.

Sect. 707.

¶ Item ſi home ad iſſue deux fits & eſt diſſeiſie, & leigne fits releſſa al diſſeiſor per ſon fait oue garranty, &c. & morust ſans iſſue, & apres ceo le pier morust, ceo eſt vn lineall Garrantie al puiſne fits, pur ceo que coment q̄ leigne fits morust en la vie le pier, vncore pur ceo que per poſſibilitie, il puiſſoit eſtre q̄ il puiſſoit conueier a luy le title d̄ terre per ſon eigne frere, ſi nul tiel Garrantie fuiſſoit. Car il puiſſoit eſtre que apres la mort le pier, leigne frere entroit en les tenements & morust ſans iſſue, & donque le puiſne fits conuepera a luy le title per leigne fits. Mes en tiel cas ſi le puiſne fits releſſe oue Garrantie a le diſſeiſor, et morust ſans iſſue ceo eſt vn collaterall Garrantie al eigne fits, pur ceo que de tiel terre que fuit al pier, leigne per nul poſſibility poit conueyer a luy le title per meane de le puiſne fits.

ALſo if a man hath iſſue two ſonnes, and is diſſeiſed, and the eldeſt ſonne releaſe to the diſſeiſor by his deed with Warranty, &c. and dies without iſſue, and afterwards the father dieth, this is a lineall warrantie to the younger ſonne, becauſe albeit the eldeſt ſonne died in the life of the father, yet by poſſibility it might haue beene, that hee might conuey to him the Title of the Land by his elder brother, if no ſuch Warranty had beene. For it might bee that after the death of the father the elder brother entred into the Tenements and died without iſſue, and then the yonger ſonne ſhall conuey to him the title by the elder ſon. But in this caſe if the yonger ſon releaſeth with warr' to the diſſeiſor, & dieth without iſſue, this is a collateral warr. to the elder ſon, becauſe that of ſuch lād as was the fathers, the elder by no poſſibility can conuey to him the title by meanes of the younger ſonne.

35.E.3.Gar.73.11.H.4.33. ¶ HEre Litel. putteth an example, where the heire that is to be barred by the Warranty, is not to make his diſcent by him that made the Warrantie, as in the caſe before; and yet becauſe by poſſibilitie he might haue claimed by the eldeſt ſonne, if hee had ſuruiued the father, & died without iſſue, & ſo the yonger brother might by poſſibilitie haue bin heire to him, the Warrantie is lineall.

And here it is to be noted, that the Warrantie of the eldeſt ſonne diſcended before the right diſcended, whereof more ſhall be ſayd hereafter Sect.741. and the opinion of Littleton in this Caſe is holden for Law, againſt the opintons in 35.E.3.Gar 73.

9.E.3.16. 38.E.3.21. 46.E.3.26. 8.R.2.Gar.101. ¶ *Mes en tiel caſe le puiſne fits releaſe oue Garrantie, &c.* This warrantie in this caſe is collaterall to the eldeſt ſonne, and to the Iſſues of his bodie: but if the eldeſt ſonne dieth without Iſſue of his bodie, then the Warrantie is lineall to the Iſſues of the bodie of the youngeſt: and ſo the Warrantie that was collaterall to ſome perſons, may become lineall to others.

Sect.

Sect. 708.

¶ Item si Tenant en le taile ad issue trois fits, et discontinue le Taile en fee, et le mulnes fits releſſa per ſon fait al Diſcontinuee, et oblige luy et ſes heirs a garrantie, &c. et puis le tenant en l'Tayle morust, et le mulnes fits morust ſans iſſue, ore leigne fits eſt barre dauer aſcun recouerie per Briefe de Formedon, pur ceo que le garrantie del mulnes frere eſt collaterall a luy, entant que il ne poit per nul manner conueyer a luy per force del taile aſcun diſcent per le mulnes, et pur ceo cē vn colateral garrantie. Mes en cē Cas ſi leigne Fits deuie ſans iſſue, ore l'puiſn frere poit bien auer vn briefe de Formdon en le diſcender, et recouera meſme le tre, pur ceo que le Garrantie del mulnes eſt lineal al fits puiſne, pur ceo que il puiſſoit eſtre que p poſſibilitie le mulnes puiſſoit eſtre ſeiſie p force dl taile apres la mort ſon eigne frere, et

ALſo if Tenaunt in Taile hath iſſue three ſonnes, and diſcontinue the Tayle in fee, and the middle ſon releaſe by his Deed to the Diſcontinuee, and bind him and his heirs to warrantie, &c. and after the tenant in taile dieth, and the middle ſonne dieth without iſſue, now the eldeſt Son is barred to haue any recouerie by writ of *Formedon*, becauſe the Warrantie of the middle brother is collaterall to him, in as much as he can by no meanes conuey to him by force of the Tayle any diſcent by the middle, and therefore this is a collateral warrantie. But in this caſe if the eldeſt ſonne die without iſſue, now the yongeſt brother may well haue a writ of *Formdon* in the diſcender & ſhal recouer the ſame land, becauſe the Warrantie of the middle is lineall to the yongeſt ſonne, for that it might bee that by poſſibilitie the middle might be ſeiſed by force of the taile after the death of his eldeſt

¶ Hereby it alſo appeareth, That a warranty that is collaterall in reſpect of ſome perſons, may afterwards become lineall in reſpect of others. Whereupon it followeth, * That a Collateral warrantie doth not giue a Right, but bindeth onely a Right ſo long as the ſame continueth: but if the Collaterall warrantie be determined, remooued, or defeated, the Right is reuiued; (f) And yet in an Aſſiſe the Plaintife hath made his title by a Collateral warrantie.

8.R.2.Gar.101.

* 43.Aſſ.44 24 H.8. tit. Taile Br. 7.H.5.6.tit. Aſſ 359. 34.E.3.Dr. 29.19.H.6 59 21.H.7.40.5.H.7.29. 3.H.7.9.b.

(f) 16.Aſſ p.16.27.Aſſ.74. 22.Aſſ.50.43.Aſſ.8. 14.H.4.13.19.H.6.60.

¶ *Barre* is a word common as well to the Engliſh as to the French, of which cōmeth the noun, a bar Barra. It ſignifieth legally a deſtruction for euer, or taking away for a time of the Action of him that right hath. And Barra is an Italian word, and ſignifieth Barre, as we vſe it, and it is called a Plea in Barre, when ſuch a Barre is pleaded. Here Littl. putteth an example of a barre of an eſtate taile by a Collaterall Warrantie. It is to be obſerued, That in ſome Caſes an Eſtate taile may be barred by ſome Acts of Parliament made ſince Littleton wrote, and in ſome caſes an Eſtate taile cannot be barred, which might when Littleton wrote haue beene barred. For example, If Tenant in Tayle leuies a Fine with Proclamations according to the ſtatute, this is a barre to the Eſtate taile, but not to him in reuerſion or remainder, if hee maketh his claime, or purſue his Action within fiue yeares after the ſtate Taile ſpent.

4.H.7.ca.24.& 32.H.8.c.36

(b) If a gift be made to the eldeſt ſonne, and to the heires of his bodie, the remainder to the father and to the heires of his bodie, the father dieth, the eldeſt ſonne leuieth a Fine with proclamations, & dieth with-

(b) Dalſon 2.El.& 7.El. Vi.li.3.fo.84.le caſe de Fines.

swithout issue, this shal barre the second sonne for the remainder descended to the eldest.

donque le puisne frer puisloit conuеyer son title de discent per le mulnes.

brother, and then the yoūgest brother might conuey his title of discent by the middle brother.

If tenant in taile bee disseised, or haue a right of action, and the Tenant of the land leuy a fine with proclamations, and fiue yeares passe, the right of the estate taile is barred.

(b) If Tenant in taile in possession, or that hath a Right of entrie bee attainted of high treason, the estate taile is barred, and the land is forfeited to the King; and none of these were barres when Littleton wrote. A lineall warrantie and Alets was a barre to the estate tayle when Littleton wrote, whereof more shall be said hereafter.

(c) A common recouery with a Voucher ouer, and a Judgement to recouer in value was a barre of the estate taile when Littleton wrote. (d) And of Common recoueries there be two sorts, viz. one with a single Voucher, and another with a double Voucher; and that is more common and more safe: there may be more Vouchers ouer.

(c) If the King had made a gift in taile, and the Donee had suffered a Common recouery, this should haue barred the estate taile in Littletons time, but not the reuersion or remainder in the King. And so if such a Donee had leuied a fine with Proclamations after the Statute of 4.H.7. this had barred the estate taile, although the reuersion was in the King. (f) But since Littleton wrote a Common recouery had against Tenant in taile of the Kings gift, or such a fine leuied by him, the reuersion continuing in the Crowne, is no barre to the estate taile by the Statute of 34. H, 8. And where the words of the Statute bee (whereof the reuersion or remainder at the time of such recouery had shall be in the King) these Ten things are to be obserued vpon the construction of that act.

First, that the estate taile must be created by a King, and not by any subiect, albeit the King be his heire to the reuersion, for the Preamble speakes of gifts made to subiects, and none can haue subiects but the King. And also in the Preamble it is said (for seruice done to the Kings of the Realme) and the body of the act referreth to the Preamble. (g) And therefore if the Duke of Lancaster had made a gift in taile, and the reuersion descended to the King, yet was not that estate tayle restrained by that Statute, and so of the like.

Secondly, If the King grant ouer the Reuersion, then a recouery suffered will barre the state tayle, because the King had no Reuersion at the time of the recouery.

Thirdly, If the King make a gift in tayle, the remaynder in tayle, or grant the Reuersion in tayle, keeping the Reuersion in the Crowne, a recouery against Tenant in tayle in possession shall neyther barre the estate tayle in possession by the expresse purview of the Statute, nor by consequence the state in Remaynder or Reuersion, for that the Reuersion or Remaynder cannot be barred but where the Estate tayle in possession is barred.

Fourthly, If a subiect make a gift in tayle, the Remaynder to the King in fee, albeit the words of the Statute be, (whereof the Reuersion or Remaynder of the same, &c.) yet seeing the estate in tayle was not created by a King, as hath beene said, the estate tayle may be barred by a common recouery.

Fiftly, If Prince Henry Sonne of Henry the Seuenth, had made a gift in tayle, the Remaynder to Henry the Seuenth in fee, which Remaynder by the death of Henry the Seuenth had discended to Henry the Eighth, so as he had the Remaynder by discent, yet might Tenant in tayle, for the cause aforesaid, barre the estate tayle by a common recouery.

Sixtly, The word (Remaynder) in the Statute is no vaine word, for the words of the preamble be, The King hath giuen or granted or otherwise prouided to his Seruants and Subiects. The word (Reuersion) in the body of the Act hath reference to these words (giuen or granted) and (Remaynder) hath reference to these words (otherwise prouided.) As if the King in consideration of Money, or of assurance of Land, or for other consideration by way of prouision, procure a Subiect by Deed indented and inrolled to make a gift in tayle to one of his Seruants and Subiects for recompence of seruice, or other consideration, the Remaynder to the King in fee, and all this appeare of Record, this is a good prouision within the Statute, and the Tenant in tayle cannot by a common recouery barre the estate tayle. So it is, if the Remaynder be limited to the King in tayle: but if the Remaynder be limited to the King for yeares, or for life, that is no such Remaynder, as is intended by the Statute, because it is of no Remaynder of continuance, as it ought to bee, as it appeareth by the preamble, and it ought to haue some affinitie with a Reuersion, wherewith it is ioyned.

Seuenthly, where a common recouery cannot barre the state tayle by force of the said Statute, there a fine leuied in fee, in tayle, for liues, or yeares with Proclamations according to the Statutes, shall not barre the state tayle, or the issue in tayle where the Reuersion or Remaynder

(b) 28.H.8.ca.13. 33.H.8.ca.20. 5.E.6.ca.11. Stan. Pl. Coron. 18.

(c) 12.E.4.19. Taltarums case.
(d) Vid. dauant Sect.690. Vid. lib.3.fo.5. Cuppledicks case, & fo.94.97.106. Lib.1.fo.62. Capells case. Lib.2 fo.16.52.74 77. Lib.6.fo.41.32. lib.10.fo.37. Mary Portingtons case.
(e) 33.H.8.taile Br.41. Pl.Com.fo.555. 29.H.8.Dier 52.
(f) 34.H.8 ca.20.

(g) Trin.23.Eliz. inter Dimely & Assheton resolued in the Court of Wards. Lib.2.fol.15 & 16.in Wisemans case.

Lib 8.fol.77.78. The Lord Staffords case.

Lib.2.fol.15.16.Wisemans case. Lib.2.fol.52.Cholmeleis Case.

Lib.2.fol.16.Wisemans case

mayndor is in the King, as is aforesaid, by reason of these words in the said Act, (the said recouery or any other thing or things hereafter to be had, done, or suffered by or against any such Tenant in tayle to the contrary notwithstanding) which words include a fine leuied by such a Donee, and restrayneth the same.

So resolued Pasch. 31. Eliz. Rot. 1645. in Netleys case in Communi Banco.

Eightly, But where a common recouery shall barre the estate tayle, notwithstanding that Statute, there a fine with Proclamations shall barre the same also.

Ninthly, where the said latter words of the Statute be (had, done, or suffered by or against any such Tenant in tayle) the sence and construction is, where Tenant in tayle is partie or priuie to the Act, be it by doing or suffering that which should worke the barre, and not by meere permission he being a stranger to the Act.

So holden Trin. 39. Eliz. Rot. 1914. inter Stratford & Dower in Communi Banco.

As if Tenant in tayle of the gift of the King, the reuersion to the King expectant, is disseised, and the Disseisor leuie a fine, and fiue yeares passe, this shall barre the estate tayle: and so if a collaterall Ancestor of the Donee release with warrantie, and the Donee suffer the warrantie to discend without any entry made in the life of the Ancestor, this shall bind the Tenant in tayle, because hee is not partie or priuie to any Act, either done or suffered by or against him.

Tenthly, Albeit the preamble of the Statute extend only to gifts in tayle made by the Kings of England before the Act (viz. hath giuen and granted, &c.) and the bodie of the Act referreth to the preamble (viz. that no such feined recoueries hereafter to be had against such Tenant in tayle) so as this word (such) may seeme to couple the bodie and the preamble together, yet in this case (such) shall be taken for such in equall mischiefe, or in like case, and by diuers parts of the Act it appeareth, that the makers of the Act intended to extend it to future gifts, and so is the Law taken at this day without question.

A recouery in a Writ of Right against Tenant in tayle without a Voucher is no barre of any gift in tayle.

33. E. 3. iudgement 252. 3. H. 6. 55. 10 H. 6. 5 14. E. 4. 5. b. 15. b. 4. 8 F. N. B. 34. b. Pl. am 237. 28. E. 3. 95. F. N. B. 28. I.

If Tenant in tayle the remaynder ouer in fee celle, and the Lord recouer in a Cessauit, this shall not barre the estate tayle, for the issue shall recouer in a Formedon: neither were eyther of these barres when Littleton wrote. But let vs now heare Littleton.

Section 709.

¶ Item si Tenant en taile discontinua le taile, & ad issue & deuy, & luncle del issue releasa al discontinuee oue Garrantie, &c. & mozust sans issue, ceo est collateral Garrantie al issue en tayle, pur ceo que le Garrantie discendist sur lissue, le quel ne pott soy conueyer a le tayle per meane de son vncle.

ALso if tenant in tayle discontinue the taile and hath issue and dieth, and the Vncle of the issue release to the Discontinuee with Warrantie, &c. and dieth without issue, this is a collaterall Warrantie to the issue in tayle, because the Warrantie discendeth vpon the issue, that cannot conuey himselfe to the entayle by meanes of his vncle.

¶ The reason wherefore the warrantie of the Vncle hauing no right to the Land entailed shall barre the issue in tayle is for that the Law presumeth that the Vncle would not vnnaturally disherit his lawfull heire being of his own bloud, of that right which the Vncle neuer had, but came to the heire by another mean, vnlesse hee would leaue him greater aduancement. Nemo præsumitur alienam posteritatem suæ prætulisse. And in this case the Law will admit no proofe against that which the Law presumeth And so it is of all other Collaterall Warranties for no man is presumed to doe any thing against nature.

Pl. Com. fol. 307. a. in Sheringtons case.

(k) And the like holdeth in some other Cases, as if a Rent be behind for twenty yeares, and the Lord make an Acquittance for the last that is due, all the rest are presumed to bee paid, and the Law will admit no proofe against this presumption. (l) So if a man bee within the foure Seas, and his wife hath a child, the Law presumeth that it is the child of the husband, and against this presumption the Law will admit no proofe.

(k) 11. H. 4. 55. 10. Eliz. Dier 271.

(l) 7. H. 4. 9.

(m) If a man that is innocent bee accused of Felony, and for feare flieth for the same, albeit

(m) 3. E. 3. Coron. Lamb.

bolt he judicially acquitteth himselfe of the Felonie, yet if it be found that he fled for the Felony, he shall notwithstanding his innocencie forfeit all his Goods and Chattels, Debts and Duties, for as to the forfeiture of them the Law will admit no proofe against the presumption in Law grounded upon his flight: and so in many other Cases. But yet the generall rule is, Quod stabitur presumptioni donec probetur in contrarium. But as you see it hath many exceptions.

Bracton lib. 1. cap. 9.

(n) It hath beene attempted in Parliament, that a Statute might bee made, that no man (n) Rot. Parliament. 50. E. 3. num. 77. should be barred by a Warrantie collaterall, but where Heires discend from the same Ancestor: but it never tooke effect, for that it should weaken common Assurances.

Sect. 710.

¶ A *Dissue deux files.* If husband and wife Covenants in especiall tayle have issue a Daughter, and the wife die, the husband by a second wife hath issue another daughter, and discontinueth in fee and dieth, a collaterall Ancestor of the Daughters releaseth to the discontinuee with warrantie and dieth, the warrantie discendeth upon both daughters, yet the issue in tayle shall be barred of the whole, for in judgement of Law the entire warrantie discendeth upon both of them.

5. E. 2. Gar. 78. lib. 8. fol. 41. Syms Case.

¶ *Et leigne enter en lentiertie & ent fait vn feoffement, &c.* Here it is to bee understood, that when one Coparcener doth generally enter into the whole, this doth not benefit the estate which discended by the Law to the other, unlesse she that doth enter claymeth the whole, and taketh the profits of the whole, for that shall bereave the freehold in Law of the other Parcener.

See before in the Chapter of Discent. Sect. 398.

Otherwise it is after the Parceners be actually seised, the taking of the whole profits or any clayme made by the one cannot put the other out of possession without an

¶ Item si le tenant en taile ad issue deux files & morust, et leigne entra en le entierty & ent fait vn feoffment ẽ fee oue garrantie, &c. et puis leigne file morust sans issue, en cest cas le puisne file est barre quant al vn moity, et quant al auter moity el nest pas barre. Car quant a la moity que affiert a le puisne file, el est barre, pur ceo que quant a cel part el ne poit conueyer le discent per my le maine de son eigne soer et pur ceo quant a cel moity, ceo est vn collaterall Garranty. Mes quant al auter moity que affiert a son eigne soer, le Garranty nest pas barre a le puisne soer, pur ceo q̃ el poit conueyer s̃ discent, quant a cel moity que affiert a son eigne soer per mesne le eigne soer, tiels quant a cest moity que affiert al eigñ soer, le Garranty

ALso if the Tenant in tayle hath issue two daughters and dieth, and the elder entreth into the whole, and thereof maketh a feoffment in fee with warrantie, &c. and after the elder daughter dieth without issue. In this case the yonger daughter is barred as to the one moitie and as to the other moitie she is not barred. For as to the moitie which belõgeth to the yonger daughter, shee is barred, because as to this part shee cannot convey the discent by means of her elder sister, and therefore as to this moitie, this is a collaterall Warrantie. But as to the other moitie, which belongeth to her elder sister, the Warrantie is no bar to the younger sister because she may convey her discent as to that moitie which belongeth to her elder sister by the same elder sister, So as to this moitie which be-

ty eſt lineall al puiſne ſoer.

longeth to the elder ſiſter the Warrantie is lineal to the yonger ſiſter.

Sect. 711.

¶ Et nota q̄ quant a celuy que demanda fee ſimple per aſcun de ſes aunceſters, il ſerra barre per Garranty lineall que diſcendiſt ſur luy, ſinon que ſoit reſtraine per aſcun eſtatute.

And note, that as to him that demandeth fee ſimple by any of his Anceſtors he ſhall be barred by Warrantie lineall which diſcendeth vpon him, vnleſſe he be reſtrained by ſome Statute.

Sect. 712.

¶ Mes il que demande fee tatle per briefe de Formedon & diſcender, ne ſerra my barre per lineall Garrantie, ſinon que il ad aſſets per diſcent & fee ſimple per meſm̄ launceſter que fiſt le Garranty. Mes collateral Garranty eſt barre a celuy que demanda fee, et auxy a celuy que demaunda fee tayle ſans aſcun auter diſcent de fee ſimple, ſinon en caſes queux ſont reſtraines per les eſtatutes, & auters caſes pur certaine cauſes, come ſerra dit en apres.

But hee that demandeth Fee tayle by Writ of *Formedon* in *diſcender*, ſhall not bee barred by lineall Warrantie, vnleſſe hee hath aſſets by diſcent in fee ſimple by the ſame Anceſtor that made the Warrantie. But collaterall Warrantie is a barre to him that demandeth fee, and alſo to him that demandeth fee Tayle without any other diſcent of fee ſimple, except in caſes which are reſtrained by the Statutes, and, in other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

actuall putting out or diſſeiſin. And in this caſe of Littleton, when one Coparcener entreth into the whole, and maketh a feoffment of the whole, this deſtroyeth the freehold in Law out of the other Coparcener.

Now ſeeing the entry in this caſe of Lit. deueſted not the eſtate of the other Parcener, if no further proceeding had beene, then it is to bee demanded, that ſeeing the feoffment doth worke the wrong, & bee the wrong either a diſſeiſin or in nature of an abatement, how can the Warrantie annexed to that feoffment that wrought the wrong be collaterall or bind the youngeſt Siſter for her part? To this it is anſwered, that when the one ſiſter entreth into the whole, the poſſeſſion being void, and maketh a feoffment in fee, this Act ſubſequent doth ſo explaine the entrie precedent into the whole, that now by conſtruction of Law, ſhee was only ſeiſed of the whole, and this feoffment can bee no diſſeiſin, becauſe the other ſiſter was neuer ſeiſed, nor any abatement, becauſe they both made but one heire to the Anceſtor, and one Freehold and Inheritance diſcended to them. So as in iudgement of Law the Warranty doth not commence by diſſeiſin or by abatement, and without queſtion her entrie was no intruſion. Pl. Com. 549.

¶ Tenant in tayle hath iſſue two daughters, and diſcontinueth in fee the youngeſt diſſeiſeth the diſcontinuee to the vſe of her ſelfe and her ſiſter, the Diſcontinuee ouſteth her, againſt whom ſhe recouereth in an Aſſiſe, the eldeſt agreeth to the Diſſeiſin, as ſhe may againſt her ſiſter, and becomes Joynetenant with her. And thus is the Booke in the 21. Aſſiſe (n) to be intended, the caſe being no other in effect; but A diſſeiſeth the one to the vſe of himſelfe and B, B agreeth, by this he is Joynetenant with A. (n) 21. Aſſ. p. 19.

¶ *Et nota que quant a celuy que demanda fee simple, &c.* In these two Sections there are expressed foure legall conclusions:

First, That a lineall Warrantie doth bind the right of a Fee simple.

Secondly, That a lineall warrantie doth not bind the right of an Estate taile, for that it is restrained by the Statute of Donis conditionalibus.

Thirdly, That a lineall warrantie and assets is a barre of the right in Taile, and is not restrained (as hath beene sayd) by the sayd Act.

Fourthly, That a Collaterall warrantie made by a Collaterall Ancestor of the Donee, doth bind the right of an estate taile, albeit there be no Assets, and the reason thereof is upon the Statute of Donis conditionalibus, for that it is not made by the Tenant in taile, &c. as the lineall Warranty is.

To this may be added, that the Warranty of the Donee in taile which is collaterall to the Donor, or to him in remainder, being heire to him doth binde them without any assets. For though the alienation of the Donee after issue doth not barre the Donor, which was the mischiefe prouided for by the Act, yet the Warranty being collateral doth barre both of them, for the Act restraineth not that warranty, but it remaineth at the Common Law as Littleton after saith: and in like manner the Warranty of the Donee doth barre him in the remainder.

3.E.3.22. 4.E.3.28.30. 6.E.3.56. 7.E.3.54 57. 9.E.3.16 10.E.3.14. 15.E.3.Garran.27. 20 E.3.Ibid.39 25.E.3.50. 27.E.3.83. 41.E.3.Garr.16. Mich.38.E.3 Coram Rege Abbet de Colchesters case. 45.Ass.6.Pl.Com.554. 19.E.4.10. Vid.Sect.703.747.

¶ *Assets.* (idest) quod tantundem valet, sufficient by discent.

Note Assets requisite to make a lineall warranty a barre must haue fiue qualities. First, it must be assets (that is) of equall value, or more at the time of the Discent. Secondly, it must be of discent, and not by purchase or gift. Thirdly, as Littleton here saith, it must be assets in fee simple and not in taile, or for another mans life. Fourthly, it must descend to him as heire to the same Ancestor that made the Warranty as Littleton also here saith. Fiftly, it must be of lands or tenements, or rents or seruices valuable, or other profits issuing out of lands or tenements and not personall inheritances as Annuities, and the like. Sixtly, it must be in state or interest, and not in vse or right of actions or rights of entrie, for they are no assets vntill they be brought into possession. (a) But if a rent in fee simple issuing out of the land of the heire descend vnto him whereby it is extinct, yet this is assets, and to this purpose hath in iudgement of Law a continuance.

(b) A Seigniory in free Almoigne is no assets, because it is not valuable, and therefore not to be extended, and so it seemeth of a Seigniory of Homage and fealty But an Aduowson is Assets whereof (c) Fleta saith; Item de Ecclesiis quæ ad donationem domini pertinent quot sunt, & quæ, & vbi, & quantum valeat quælibet Ecclesia per annum secundum veram ipsius æstimationem, & pro marca solidus extendatur, vt si Ecclesia centum marcas valeat per annum, ad centum solidos extendatur aduocatio per annum. And herewith agreeth Britton, and others haue reckoned a shilling in the pound, and Britton addeth further, Mes si la aduowson duist estre vendue, adonques serr' le reasonable price solonque le value en vn an a cel extent. Wherein it is to be obserued, that Antiquity did euer reckon by markes.

Fleta lib.2.ca.65. Britton 185. 4.E.3.Garr.63. 16.E.3.Assets 4. 41.E.3.9. 7.H.6.3. 31.H.4 20.

24.E.3.47.

(a) 31.E.3.Assets 5. 13.E.3.Recovery in value 17. Lib.3.fo.31. Butler & Bakers case.

(b) 14.E.3.Mesne 9. Registrum 293.

(c) Fleta lib.2.ca.65. Britton, fo.165. Extent. mercat.5.H.7.37. 32.H.6.21. 33.E.3.Gar.102

Sect. 713.

¶ Item si terre soit done a vn home et a les heires de son corps engendres. le quel prent feme, et ont issue fits enter eux, & le baron discontinua le taile en fee, et deuy, et puis la feme releſa al discontinuee en fee oue garrantie, &c. et morust, & le garrantie discendist a le fits, c̄ est vn collateral garrantie.

ALso if land bee giuen to a man and to the heires of his body begotten, who taketh wife, and haue issue a sonne betweene them, and the husband discontinues the taile in fee and dieth, and after the wife releaseth to the Discontinuee in fee with warranty, &c. & dyeth, and the warrantie discends to the son, this is a collaterall warranty.

¶ This case standeth vpon the same reason that diuers other formerly put by our Author, doe, viz. that because the heire claymeth only from the father Per formam doni, and nothing from the wife, that therefore the warrantie of the wife is collaterall, and the Warrantie made by any Ancestor male or female of the wife bindeth, and here the Warrantie descended after the discent of the right.

Sect.

Section 714.

CMES si tenements soyent dones a le baron et a sa feme, et a les heires de lour deux corps engendres, queux ont issue fits, et le baron discontinua le taile et morust, et puis la feme relessa oue garrantie et morust, cest garranty nest forsque vn lineal garranty a le fits: Car le fits ne serra barre en ceo cas de suer son bře de Formedon, sinon que il ad assets per discent en fee simple per sa mere, pur ceo que lour issue en briefe de Formedon couient conueyer a luy le droit come heire a son pere et a sa mere de lour deux corps engendres, per forme del done, et issint en tiel case, le garrantie de le pere, et le garrantie de la mere ne sont forsque lyneal garř al heire, &c.

BVt if lands be giuen to the husband & wife, and to the heires of their two bodies begotten, who haue issue a son, and the husband discontinue the taile and dyeth, and after the wife release with warranty and dieth, this warranty is but a lineall warranty to the son: For the sonne shall not be barred in this case to sue his writ of *Formedon*, vnlesse that he hath Assets by discent in fee simple by his mother, because their issue in the writ of *Formd.* ought to conuey to him the right as heire to his father and mother of their two bodies begotten *Per formam doni*, and so in this case the warranty of the father and the warrantie of the mother are but lineall warranty to the heire, &c.

CHere is a point worthy of obseruation, that albeit in this case the issue in taile must claime as heire of both their bodyes, yet the warranty of eit. er of them is lineall to the issue, and yet the issue cannot claime as heire to either of them alone, but of both. 35.E.3.tit. Gar 73.

If lands be giuen to a man and to a woman vnmarried, and the heires of their two bodyes, and they enter. marry, and are disseised, and the husband release with warranty, the wife dieth, the husband dieth, albeit the Wones did take by moyties, yet the warranty is lineall for the whole, because as our Author here saith, the issue must in a Formedon conuey to him the right as heire to his father and his mother of their two bodyes engendred, and therefore it is collaterall for no part.

Sect. 715.

CEt nota que en chescun cas ou home demanda tenements en fee taile per briefe de Formedon, si alcun del issue en le taile que auoit possession ou que nauoit alcun possession fait vn garranty, &c. si celuy que suist le briefe ů Formedon puissoit per alcun possibility per matter que puissoit estre en fait, conueyer a luy per my celuy que fist le garranty

AND note that in euery case where a man demandeth lands in fee taile by Writ of *Formedon* if any of the issue in taile that hath possession, or that hath not possession make a warranty, &c. if hee which sueth the writ of *Formedon* might by any possibility by matter which might bee in fait, conueye to him, by him that made the warranty *Per formam doni*, this is a li-

ranty perfoꝛme del done, ceo eſt neall warranty and not collate-
vn lineal garr̃, & nēy collateral. rall.

11.E.3.Garr.93. OF this ſufficient hath beene ſaid before, Sed nunquam nimis dicitur quod nunquàm satis dicitur, for it is a point of great vſe and conſequence.

Sect. 716,717.

ITem ſi home ad iſſue trois fits, et il dona Terre al eigne fits, a auer et tener a luy et a les heires de ſon coꝛps engendꝛes, et pur default de tiel Iſſue, le remainder al mulnes fits a luy, et a les heires de ſon coꝛps engendꝛes, et pur default d tiel iſſue del mulnes, l' remainder al puiſne fits et les heires de ſon coꝛps engendꝛes, en ceſt cas ſi leigne diſcontinua le Tayle en fee, et oblige luy et ſes heyꝛes a garrantie, et moꝛuſt ſans Iſſue, ceo eſt vn collaterall Garrantie al mulnes fits, et ſerra barre a demaunder meſme la Terre peꝛ foꝛce del remainder, pur ceo que le remainder eſt ſon title, et ſon eigne frere eſt collaterall a cel title, que commence peꝛ foꝛce del remainder. En meſme le maner eſt, ſi le mulnes fits auoit meſme la terre peꝛ foꝛce del remainder, pur ceo que ſon eigne frere ne fiſt aſcun diſcontinuance, mes moꝛuſt ſans iſſue de ſon coꝛps et puꝛ l' mulnes fait vn diſcontinuance oue garrantie, &c. et moꝛuſt ſans iſſue, ceo eſt vn collaterall Garrantie a le puiſne fits. Et auxy en ceſt caſe ſi aſcun de les dits fits ſoit diſſeiſie, et le pere que fiſt le done, &c. releſſa a le Diſſeiſoꝛ tout ſon dꝛoit oue Garrantie, ceo eſt vn collaterall garrantie a celuy fits ſur que le Garranty diſcendiſt, Cauſa qua ſupra.

ALſo if a man hath Iſſue three ſonnes, and giueth land to the eldeſt ſonne, to haue and to hold to him and to the heires of his bodie begotten, and for default of ſuch iſſue, the remainder to the middle ſonne, to him and to the Heires of his bodie begotten, and for default of ſuch iſſue of the middle ſonne, the remainder to the yongeſt Son and to the heires of his bodie begotten; In this caſe if the eldeſt diſcontinue the taile in fee, & bind him & his heires to Warrantie, and dieth without iſſue, this is a collaterall warrantie to the middle ſon, & ſhal be a bar to demand the ſame land by force of the Rem', for that the remainder is his title, and his elder brother is collaterall to this title, which commenceth by force of the remainder. In the ſame manner it is if the middle ſon hath the ſame land by force of the Remainder, becauſe his eldeſt brother made no diſcontinuance, but died without Iſſue of his bodie, and after the middle make a diſcontinuance with warrantie, &c. and dieth without iſſue, this is a collaterall warrantie to the youngeſt ſon. And alſo in this caſe if any of the ſayd ſonnes be diſſeiſed, and the Father that made the gift, &c. releaſeth to the diſſeiſor all his right with waꝛ, this is a collaterall warranty to that Son vpon whom the warranty diſcendeth, *Cauſa qua ſupra.*

Sect.

Sect. 717.

¶ ET sic nota, Que lou home que est collateral a le Title, et ceo release one Garrantie, &c. ceo est vn Collaterall Garrantie.

AND so note, That where a Man that is collaterall to the Title, and releaseth this with Warrantie, &c. this is a collaterall Warrantie.

¶ HEre it appeareth, That it is not adiudged in Law a Collaterall Warrantie, in respect of the bloud, for the Warrantie may be collaterall, albeit the bloud be lineall, and the Warrantie may be lineall, albeit the bloud be collaterall, as hath beene said. But it is in Law deemed a Collaterall Warrantie, in respect that he that maketh the Warrantie is collaterall to the title of him vpon whom the Warrantie doth fall, as by the example which Littleton here putteth, and by that which hath beene formerly sayd, is manifest. 8.R.2.Gar.101.V.Sect.704

Sect. 718.

¶ ITem si Pier dona Terre a son eigne fits, a auer tenā a luy & a les hēz Males de son corps engendres, le Remainder a le second fits, &c. si leigne fits alienast en fee ouesqz Garrantie, &c. et ad issue female, et morust sans issue male, ceo nest pas collaterall Garrantie al second fits, car il ne serra barre de ſ action de Formedon en le remainder, pur ceo que le Garranty discendist al file vl eigni fits, et nemy al second fits. Car chescun Garrantie que discendist, discendist a celuy que est heire a luy que fist le Garrantie per le Commō Ley.

ALso if a father giueth land to his eldest sonne, to haue and to hold to him and to the Heirs males of his bodie begotten, the remainder to the second sonne, &c. if the eldest sonne alieneth in fee with warranty, &c. & hath issue female, & dieth without Issue male, this is no collaterall warrantie to the second Son, for he shall not be barred of his Action of *Formedon* in the Remainder, because the warr discended to the daughter of the elder son, & not to the secōd son: for euery warrāty which discends, discēdeth to him that is heir to him who made the Warrantie by the Common Law.

¶ HEre is rehearsed a Maxime of the Common law that euerie warrantie doth discend vpon him that is heire to him that made the warranty, by the Common Law, as by this example it appeareth. V.Sect.3.603.735.736.737.

¶ *A celuy que est heire a luy que fist le Garrantie per le Commun ley, &c.* Hereupon many things worthie to bee knowne are to be vnderstood. (a) First, That if a man infeoffeth another of an acre of ground with warrantie, and hath Issue two sonnes, and dieth seised of another acre of land, of the nature of Burrough English, the feoffee is impleaded, albeit the warrantie discendeth onely vpon the eldest sonne, yet may hee vouch them both; the one as Heyre to the warrantie, & the other as heire to the land: for if he should vouch the eldest sonne onely, then should hee not haue the fruit of his warrantie, viz. a recouerie in value, the youngest sonne only he cannot vouch, because hee is not heire at the Common Law, vpon whom the warrantie discendeth. (a) 40.E.3.14.

(b) So it is of heyres in Gauelkind, the eldest may be vouched as heire to the warrantie, and the other sonnes in respect of the Inheritance discen-

ded (b) 22.E.4.10.4.E.3.35. 27.H.6.1.4.11.E.3.Dr.7.

ded vnto them. (c) And in like sort, the heire at the Common Law, and the heire of the part of the mother shall be vouched. But the heire at the Common Law may bee vouched alone in both these cases, at the election of the Tenant, & sic de similibus. (d) In the same manner if a man dieth seised of certaine lands in fee, hauing issue a sonne and a daughter by one Wife, and a sonne by another, the eldest sonne entreth and dieth, the land discends to the sister, In this case the warrantie discendeth on the sonne, and he may be vouched as heire, and the Sister as heire of the Land: In which and the other case of Burrough English, the sonne and heyre by the Common Law hauing nothing by discent, the whole losse of the recouerie in value lieth vpon the heires of the land, albeit they be no heires to the warrantie. Then put the case that there is a warrantie paramount, who shall deraigne that warrantie? and to whom shall the recompence in value goe? Some haue sayd, That as they are vouched together, so shall they answouch ouer, and that the recompence in value shal enure according to the losse, and that the effect must pursue the cause, as a recouerie in value by a warrantie of the part of the mother shall goe to the heire of the part of the mother, &c.

Some others hold, That it is against the Maxime of Law, that they that are not heyres to the warrantie should ioyne in Voucher, or to take benefit of the warrantie which discended not to them, but that the heire at the Common Law, to whom the warrantie discended shall deraigne the warrantie, and recouer in value, and that this doth stand with the rule of the Common Law.

Others hold the contrarie, and that this should be both against the rule of Law, and against reason also; for by the rule of Law (e) the Vouchee shall neuer sue to haue execution in value, vntill execution be sued against him. But in this case Execution can neuer be sued against the heire at the Common Law, therefore he cannot sue to haue execution ouer in value. Secondly, It should be against reason, that the heire at the Common Law should haue totum lucrum, and the speciall heires totum damnum. I find in our Bookes, (f) that this reason is yelded, that the speciall heire should not be vouched onely; For (say they) if the speciall heires should be vouched onely, then could not they deraigne the warrantie ouer, which should be mischieuous, that they should lose the benefit of the warrantie, if they should be vouched onely. But if the heire at the Common law were vouched with them, (as by the law he ought) all might be sued, and therefore studie well this poynt how it may be done.

(g) If Tenant in generall Tayle be, and a common recouerie is had against him and his wife, where his wife hath nothing, and they vouch, and haue iudgement to recouer in value, tenant in Taile dieth, and the wife suruiueth, for that the Issue in Tayle had the whole losse, the recompence shal enure wholly to him, and the wife, albeit she was partie to the iudgement, shall haue nothing in the recompence, for that she loseth nothing.

(h) If the Bastard eigne enter and take the profits, he shall be vouched onely, and not the bastard & the Mulier, because the Bastard is in apparance heire, and shall not disable himselfe.

(i) If a man be seised of lands in Gauelkind, and hath issue three sonnes, and by Obligation bindeth himselfe and his heires and dieth, an Action of Debt shall be maintainable against all the three sonnes, for the heire is not chargeable vnlesse he hath lands by discent.

(k) So if a man be seised of Land on the part of his mother, and bind himselfe and his heirs by Obligation, and dieth, an Action of Debt shall lie against the heire on the part of the mother, without naming of the heire at the Common Law. And so note a diuersitie betweene a personall lien of a Bond, and a reall lien of a warrantie.

(c) 49.Ass.4. 38.E.3.22.

(d) 32.E.3.Vouch.94. 35.H.6.33.

Pl.Com.515.

(e) 17.E.2.tit.Recouer.in value 33.1.E.3.12. 33 Edw.3. Iudgm.222. 14.E.3.ib.160. 10.E.3.52. 18.E.3 51. Li.1.fo.96. Shelleys case.

(f) 32.E.3.Vouch.94. & Greene.

(g) V.Pl.Com fo.514.

(h) 17.E.3.59. 20.E.3. Vouch.129 32.E.3.Vouch.94 5.H.7.2.

(i) 11.H.7.12. 11.E.3.tit. Des.7.Dy.5.El.238.

(k) 11.H.7.12.

Sect. 719.

(l) 24.E.3.36. 27.E.3.Age 108 38.E.3.26. 40.E.3.9. 37.H.8.Br.Nosme.1.& 40. & tit.Dons & Rem.61.

THere it appeareth, That (l) whensoeuer the Ancestor taketh any estate of freehold, a limitation after in the same Conueyance to any of his heires, are words of limitation, and not of purchase, albeit in words it be limitted by way of remainder: and therefore heere the remainder to the heires Females vesteth in the Tenant in Tayle himselfe. And it is good to bee

NOta, ſi ſre ſoit done a vn home, et a les heires males de ſon corps engendres, et pur default de tiel Iſſue, le rem ent a ſes heyres females de ſon corps engendres, et puis le Donee

NOte, if Land bee giuen to a man and to the heirs males of his bodie begotten, and for default of such Issue the Remainder thereof to his Heires femals of his body begotten, and after the

donee en le taile fait feoffment en fee ouesque garrantie accordant, & ad issue fits et file et mozust, cel Garrantie nest forsque lineall Garrantie a le fits a demaunder per brieke ð Formedon en le discender, & auxy il nest forsque lineall a l' fil, a demaunder mesme la terre per brieke de Formedon en le remaynder, sinon frere deuiast sãs issue mal, pur ceo que el claime come heire female de la corps son pere engendres. Mes ẽ cest cas, si son frere en sa vie releasast al discontinuee, &c. oue garranty, &c. & puis mozust sauns issue. c est vn collateral garrantie a le file, pur cõ q̃ el ne puit conueyer a luy le droit que el ad per force de le remaynder per ascun meane de discent per son frere. pur ceo que le frere est collaterall a le title sa soer, & pur ceo son Garrantie est collaterall, &c.

donee in tayle maketh a feoffment in fee, with warrantie accordingly and hath issue a sonne and a daughter and dieth, this warrantie is but a lineall warrantie to the Son to demand by a Writ of *Formedon* in the discender, and also it is but lineall to the Daughter to demand the same Land by Writ of *Formedon*, in the remaynder, vnlesse the brother dieth without issue male, because shee claymeth as heire female of the bodie of her father ingendred. But in this case, if her brother in his life releafe to the discontinuee, &c. with warrantie, &c. and after dieth without issue this is a collateral warrantie to the daughter, becausse shee cannot cõuey to her the right which shee hath by force of the remaynder by any meanes of discent by her brother, for that the brother is collateral to the title of his sister, and therefore his warranty is collaterall, &c.

knowne, that for Learning sake, and to find out the reason of the Law, these limitations to the heires males of the bodie, and after to the heires females of the bodie may bee put, but it is dangerous to vse them in Conueyances, for great inconuentences may arise thereupon, for if such a tenant in tayle hath issue diuers Sonnes, and they haue issue diuers Daughters, and likewise if Tenant in tayle hath issue diuers Daughters, and each of them hath issue Sonnes, none of the Daughters of the Sonnes, nor the Sonnes of the Daughters shall euer inherit to either of the said estates tayle: and so it is of the Issues of the Issues, for that (as hath beene said) the Issues inheritable must make their clayme either only by Males, or only by females, so as the Females of the Males, or Males of the Females are wholy excluded to bee inheritable to eyther of the said Estates tayle: but where the first limitation is to the heires Males, let the limitation be, for default of such issue to the heires of the bodie of the Donee, and then all the Issues, bee they Females of Males, or Males of Females are inheritable.

1. H. 6. 4. 11. H. 6. 13. 14. 28. H. 6. cause 18. Statham. Dewse. Pl. Com. 414. 30. H. 6. 43. Vide Litt. e p. tayle. Sect. 24. 27. H. 8. Br. done & rem. 61. & 62. nosme 1. & 40.

If a man giue Lands to a man, to haue and to hold to him and the heires Males of his bodie, and to him and to the heires Females of his bodie, the estate to the heires Females is in remaynder, and the Daughters shall not inherit any part, so long as there is Issue Male, for the estate to the heires Males is first limited, and shall bee first serued, and it is as much to say, and after to the heires females, and Males in construction of Law are to bee preferred.

Sect. 720.

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ALso I haue heard say, that in the time of King *Richard* the second, there was a Iustice of the Common Place dwelling in *Kent*, called *Richel*, who had issue diuers sonnes, and his intent was that his eldest sonne should haue certaine Lands and Tenements to him and to the heires of his bodie begotten, and for default of issue, the remainder to the second sonne, &c. and so to the third sonne, &c. and because hee would that none of his sonnes should alien or make Warrantie to barre or hurt the others that should be in the remainder, &c. he causeth an Indenture to be made to this effect, *viz.* That the Lands & Tenements were giuen to his eldest Son vpon such condition that if the eldest sonne alien in fee or in fee tayle, &c. or if any of his sonnes alien &c. that then their estate should cease and be void, and that then the same Lands and Tenements immediately should remayne to the second sonne, and to the heires of his bodie begotten, *& sic vltra*, the remaynder to his other sonnes, and liuerie of seisin was made accordingly.

21.H.6.fol.33.lib.6.fo.42.b. Sir Anthony Mildmayes case.

¶ *Ieo ay oye dire, &c.* Those things that one hath by credible heare say, by the example of our Author are worthy of obseruation. This inuention deuised by Iustice Richel in the Raigne of King Richard the Second, who was an Irishman borne, and the like by Thirning Chiefe Iustice in the Raigne of H.4. were both full of imperfections for Nihil simul inuentum est & perfectum, and sæpe viatorem noua non vetus orbita fallit. And therefore new inuentions in Assurances are dangerous. And hereby it may appeare, that it is not safe for any man (be he neuer so learned) to bee of councell with himselfe in his owne case, but to take aduice of other great and learned men.

Non prosunt Dominis quæ prosunt omnibus, artes.

And the reason hereof is, in suo quisque negotio hebetior est, quam in alieno.

(m) 2.H.4.fo.11.tit Action sur le case.

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Sect.

Sect. 721.

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BVt it seemeth by reason, that all such remainders in the forme aforesaid are voide and of no value, and that for three causes. One cause is, for that euery remainder which beginneth by a Deed, it behooueth that the remainder be in him to whom the remainder is entailed by force of the same deed before the liuery of seisin is made to him which shall haue the freehold, for in such case the growing and the being of the remainder is by the liuery of seisin to him that shall haue the freehold, and such remainder was not to the second sonne at the time of the liuerie of seisin in the case aforesaid, &c.

¶ HEre our Author is of opinion, that these remainders in the forme aforesaid, are void and of no value for three causes.

¶ *Vn cause est, &c.* Here he setteth downe a rule concerning remainders, viz, Euery remainder which commenceth by a Deed ought to vest in him to whom it is limitted, when Liuery of seisin is made to him that hath the particular estate.

First Littleton saith by Deed, (n) because if lands be granted and rendred by Fine for life, the remainder in taile, the remainder in fee, none of these remainders are in them in the remainder vntill the particular estate be executed.

(n) 7.R.2. Scire fa

Secondly, that the remainder be in him, &c. at the time of the Liuery. This is regularly true, but yet it hath diuers exceptions. First, vnlesse the person that is to take the remainder be not in rerum natura, (o) as if a Lease for life be made the remainder to the right heires of I.S. I.S. being then aliue, it sufficeth that the inheritance passeth presently out of the Lessor, but cannot vest in the heire of I.S. for that liuing his father he is not in rerum natura, for non est hæres viuentis, so as the remainder is good vpon this Contingent, viz. if I.S. dye during the life of the Lessee.

(o) 32.H.6.tit. Fessements & faits, 99. 27.E.3.87. 11.R.2.Detinue, 16. 2 H 7.13. 12.H.7.27. 12.E.4.2. 21.H.7.11. 7.H.4.23. 11.H.4.74. 18.H.8.3. 27 H.8.42. 38.E.3.26. 30. Ass. 47. 6.R.2. qu. Iur. dam. 20.

(p) And so it is if a man make a Lease for life to A.B and C. and if B. suruiue C. then the remainder to B. and his heires. Here is another exception out of the said rule, for albeit the person be certaine, yet inasmuch as it depends vpon the dying of B before C. the remainder cannot vest in C. presently. And the reason of both these cases in effect is, because the remainder is to commence vpon limitation of time, viz vpon the possibility of the death of one man before another, which is a common possibility.

(p) Pl. Com. in Colthirst's case, fo. 25.29.

A man letteth lands for life vpon condition to haue fee, and warranteth the land in forma prædicta, afterward the Lessee performeth the Condition, whereby the Lessee hath fee, the warranty shall extend and increase according to the state. And so it is in that case if the Lessor had dyed before the performance of the Condition, the warranty shall rise and increase according to the estate, and yet the Lessor himselfe was neuer bound to the warranty, but it hath relation from the first Liuery. And by this it appeareth that a warranty being a Couenant reall executorie may extend to an estate in futuro, hauing an estate, whereupon it may worke in the beginning. But if a man grant a Seigniory for yeares vpon Condition to haue fee with a warranty

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(o) 32.H.6.tit. Fessements & faits,99. 27.E.3.87. 11.R.2.Detinue,46. 2 H 7.13. 12.H.7.27. 12.E.4.2. 21.H.7.11. 7.H.4.23. 11.H.4.74. 18.H.8.3. 27 H.8.42. 38.E.3.26. 30. Ass.47. 6.R.2. qu. Iur.dam.20.

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warranty in forma prædicta, and after the Condition is performed, this shall not extend to the fee, because the first estate was but for yeares which was not capable of a warranty. And so it is, if a man make a Lease for yeares the remainder in fee, and warrant the land in forma prædicta, he in the remainder cannot take benefit of the warranty, because he is not partie to the Deed, and immediately he cannot take, if he were partie to the Deed, because he is named after the Habendum, and the estate for yeares is not capable of a warranty. And so it is if Land be giuen to A and B. so long as they joyntly together liue, the remainder to the right heires of him that dyeth first, and warrant the land in forma prædicta. A. dyeth his heire shall haue the warranty, and yet the remainder vested not during the life of A, for the death of A, must precede the remainder, and yet shall the heire of A. haue the land by discent.

Section 722.

¶ *Si le primer fits alienast, &c.* By the alienation of the Donee two things are wrought.

First, the Franktenement and fee is in the Alienee.

Secondly, the Reuersion is deuested out of the Donor. (q) And therefore by the alienation that transferreth the freehold & fee simple to the Alienee there can no remainder be raised and vested in the second sonne. (r) As if a man make a Lease for life vpon condition that if the Lessor grant ouer the reuersion, that then the Lessee shall haue fee, if the Lessor grant the reuersion by Fine, the Lessee shall not haue fee, for when the Fine transferreth the fee to the consusee, it should be absurd, and repugnant to reason, that the same Fine should worke an estate in the Lesse, for one alienation cannot vest an estate of one and the same land to two seuerall persons at one time.

In a mans owne grant, which is euer taken most forcibly against himselfe, the reason of Littleton doth hold, for it hath beene resolued by the Justices (s) that if a man seised of an Aduowson in fee by his Deed granteth the next presentation to A and before the Church becommeth voide by another Deede grant the next presentation of the same Church to B the second grant is voide, for A had the same granted to him before, and the Grantee shall not haue the second auoydance by construction, to haue the next auoydance, which the Grantor might lawfully grant, for the grant of the next auoydance doe not import the second presentation, (t) But if a man seised of an Aduowson

(q) 21.H.7.11. 27.H.8.24

(r) 6.R.2.quidam: dem.20.

(s) 20.H.8.Presentment al Eglise Br.52. 32.H.8.ibid.55. 29 H.8. Dier 35. 11.Eliz.282.283.

(t) 15 H.7.7. 19.E.3.gran.Imp.154.

¶ LE second cause est, si le primer fits alienast les tenements en fee, adonques est le frãktenement, et le fee simple en lalienee, et en nul auter, et si le donour auoit ascun reuersion, per tiel alienation l'reuersion est discontinue, donques coment per ascun reason poit ceo estre, q̃ tiel remainder commencera lon estre, & son nessance immediat apres tiel alienation fait a vn estrange, que ad per mesme lalienation franktenement, & fee simple, &c. Et auxy si tiel remainder serroit bone, adonques purroit il enter sur lalienee, lou il nauoit ascun maner ỏ droit auant lalienation, que serra inconuenient.

THe second cause is, if the first son alien the tenements in fee, then is the freehold and the fee simple in the Alienee, and in none other, and if the Donor had any reuersion, by such alienation the reuersion is discontinued, then how by any reason may it be, that such remainder shall commence his being and his growing immediatly after such alienation made to a stranger, that hath by the same alienation a freehold and fee simple, &c. And also if such remainder should bee good, then might hee enter vpon the Alienee, where hee had no manner of right before the alienation, which should bee inconuenient.

Argumentum ex absurdo.

son

ſon in fee take wife, now by act in Law is the wife intitled to the third preſentation, if the huſband dye before: the huſband grant the third preſentation to another, the huſband die, the heire ſhall preſent twice, the wife ſhall haue the third preſentation, and the Grantee the fourth. for in this caſe it ſhall be taken the third preſentation, which he might lawfully grant, and ſo note a diuerſitie betweene a title by act in Law, and by act of the party, for the act in Law ſhall worke no preiudice to the Grantee.

¶ *Auxi ſi tiel remainder ſerroit bone, &c.* The force of this argument is, that ſeeing the eſtate of the Alienee (albeit the words of the Condition be, that the ſtate ſhould ceaſe and be voide) being an eſtate of inheritance in lands or tenements cannot ceaſe or be voide before the ſtate be defeated by entrie, then if this remainder ſhould bee good, then muſt it giue an entrie vpon the Alienee to him that had no right before, which ſhould bee againſt the expreſſe rule of Law, viz. that an entrie cannot be giuen to a ſtranger to auoide a voydable act, as before hath beene ſaid in the Chapter of Conditions.

¶ *Le quel ſerr' enconuenient.* Here note three things. First, that whatſoeuer is againſt the rule of Law is inconuenient. Secondly, that an argument Ab inconuenienti is ſtrong to proue it is againſt Law, as often hath beene obſerued. Thirdly, that new inuentions (though of a learned Iudge in his owne profeſſion) are full of inconuenience

Vid. Sect. 87. &c.

Periculoſum eſt res nouas & inuſitatas inducere.

Eventus varios res noua ſemper habet.

Sect.723.

¶ A tierce cauſe eſt, quant la condition eſt tiel, que ſi leigne fits alienaſt, &c. que ſon eſtate ceſſera, ou ſerroit voide, &c. donqes apres tiel alienation, &c. poit le donor enter per force de tiel condition, com il ſemble, & iſſint le donor ou ſes heires en tiel caſe doient pluis toſt auer la tre que le ſecond fits, que nauoit aſcun droit deuant tiel alienation, & iſſint il ſemble que tielx remainders en le cas auantdit ſont voides.

THe third cauſe is, when the condition is ſuch, that if the elder ſonne alien, &c. that his eſtate ſhall ceaſe or be voide, &c. then after ſuch alienation, &c. may the Donor enter by force of ſuch condition as it ſeemeth, and ſo the Donor or his heires in ſuch caſe ought ſooner to haue the land then the ſecond ſonne, that had not any right before ſuch alienation, and ſo it ſeemeth that ſuch remainders in the caſe aforeſaid are voide.

¶ HEre it is to bee obſerued that part of the condition that prohibiteth the alienation made by Tenant in taile is good in Law with ſuch diſtinction as hath beene before ſaid in the Chapter of Conditions. And the conſequent of the Condition, viz. that the lands ſhould remaine to another, &c. is voide in Law, and by the opinion of Littleton the Donor may re-enter for the Condition broken, for vtile per inutile non vitiatur. which being in caſe of a Condition for the defeating of an eſtate, is worthy of obſeruation.

And it is to be noted, that after the death of the Donor, the Condition deſcendeth to the eldeſt ſonne, and conſequently his alienation doth extinguiſh the ſame for euer, wherein the weakeneſſe of this inuention appeareth, and therefore Littleton here ſaith, that it ſeemeth that the Donor may re-enter, and ſpeaketh nothing of his heires. A man hath iſſue two ſonnes, and maketh a Gift in taile to the eldeſt, the Remainder in fee to the puiſne, vpon condition, that the eldeſt ſhall not make any Diſcontinuance with warranty to barre him in the remainder, and if he doth, that then the puiſne ſonne and his heires ſhall re-enter, the eldeſt make a Feoffment in fee with warranty, the father dyeth, the eldeſt ſonne dyeth without iſſue, the puiſne may enter, but if the Diſcontinuance had beene after the death of the father, the puiſne could not haue entred. In this caſe foure points are to be obſerued. First, as Littleton here ſaith, the entrie for the breach of the Condition is giuen to the father, and not to the puiſne ſonne. Secondly, that by the death

41.E.3.fo.

Vi.Sect.446.

of the father the condition discends to the elder son, & is but suspended, & is reuiued by the death of the eldest sonne without Issue, and discendeth to the youngest sonne. Thirdly, That the Feoffement made in the life of the father cannot giue away a Condition that is Collaterall, as it may doe a right. Fourthly, That a warrantie cannot bind a title of entrie for a Condition broken, (as hath beene sayd) but if the discontinuance had beene made after the death of the father, it had extinct the Condition: which Case is put to open the reason of our Authors opinion.

In these last three Sections our Author hath taught vs an excellent poynt of Learning, That when any innouation or new inuention starts vp, to trie it with the Rules of the Common Law, (as our Author here hath done) for these be true Touchstones to seuer the pure gold from the drosse & sophistications of noueities & new inuentions. And by this example you may perceiue, That the rule of the old Common Law being soundly (as our Author hath done) applied to such noueities, it doth vtterly crush them and bring them to nothing; and commonly a new inuention doth offend against many rules and reasons (as here it appeareth) of the Common Law; and the antient Judges and Sages of the Law haue euer (as it appeareth* in our Bookes) suppressed innouations and noueities in the beginning, as soone as they haue offered to creepe vp, lest the quiet of the Common Law might bee disturbed: and so haue (a) Acts of Parliament done the like, whereof by the authorities quoted in the Margent, you may in stead of many others, vpon this occasion take a little taste. But our excellent Author in all his three Bookes hath sayd nothing but Ex veterum sapientium ore & more.

* 31.E.3.Gayer deliuerance 5. 22 Ass.12.38.E.3.1. 2.H.4.18. &c.

(a) 1.E.3.ca.15.Stat.3. 18.E.3.ca.1.&6. 4.H.4.ca.2. 11.H.6.ca.23. 13.E.4.ca.8,&c.

Section 724.725.

¶ Item a le Common ley deuant lestatute de Gloucester, si tenant p le Curtesie vst alien en fee ouesque Garrantie, apres son decease ceo fuit vn barre al heire, sicome appiert per les parols de mesme lestatut, mes il est remedy p mesme lestatute, que le Garrantie de le Tenant per l'Curtesie, ne ſt̄ my bar al hr̄e, sinon que il y ad assets per discent per le tenant per le curtesie, car deuant le dit estatute, ceo fuit vn collaterall Garrantie al hr̄e, pur ceo que il ne pusſoit conueyer ascun title de discent a les tenements per le tenant p l'Curtesie, mes tantsolement per sa mere, ou auters de ses ancestors, et ceo est le cause pur que il fuit collaterall Garrantie.

ALso at the Common Law before the Statute of Gloucester, if Tenant by the Curtesie had aliened in fee with Warrantie, after his decease this was a barre to the heire, as it appeareth by the words of the same Statute: but it is remedied by the same Statute, That the Warrantie of Tenant by the Curtesie shall bee no barre to the heire, vnlesse that hee hath Assets by discent by the Tenaunt by the Curtesie, for before the sayd Statute this was a Collaterall warrantie to the heire, for that hee could not conuey any title of Discent to the tenements by the tenant by the Curtesie, but onely by his mother, or other of his Ancestors, and this is the cause why it was a collaterall Warrantie.

Sect. 725.

¶ Mes si home enherit prēt feme, les queux ont fits enter eux, et le pier deuie, et le fits

BVt if a man Inheritor taketh wife, who haue issue a sonne betweene them, and the father di-

fits entra en la terre, et endowa ſa mere, et puis le mere alien ceo que el ad en ſa Dower, a vn auter en fee oue Garrantie accordant, et puis mozuſt, et le Garrantie diſcendiſt a le fits, oze le fits ſerra barre a demaunder meſme la terre per cauſe de la dit Garrantie, pur ceo que tiel collaterall Garrantie de Tenaunt en Dower neſt pas remedie per aſcun Eſtatute. Meſme la Ley eſt lou Tenaunt a terme de vie fait vn Alienation oueſque Garrantie, &c. et mozuſt, et le Garrantie diſcendiſt a celuy que auoit le reuerſion ou le remainder, ils ſerront barres per tiel Garrantie.

eth, and the ſonne entreth into the land, and endow his mother, and after the mother alieneth that which ſhee hath in Dower to another in Fee with Warrantie accordant, and after dieth, and the Warrantie diſcendeth to the ſonne, now the ſon ſhall be barred to demand the ſame Land by cauſe of the ſayd Warrantie, becauſe that ſuch Collaterall Warrantie of Tenaunt in Dower is not remedied by any Statute. The ſame Law is it where Tenant for life maketh an Alienation with Warrantie, &c. and dieth, and the warranty diſcendeth to him which hath the reuerſion or the rem, they ſhall be barred by ſuch Warrantie.

¶ Of this and the ſubſequent Section ſufficient hath beene ſayd before in this Chapter Sect. 697.

¶ *Neſt pas remedie per aſcun Statute.* But by a Statute made ſince, this Caſe is remedied, as you ſee before Sect. 697.

Section 726.

¶ ITem en le dit Caſe, ſi iſſint fuit que quant le tenant en Dower alienaſt, &c. ſon heire fuit deins age, et auxy al temps que le garrantie diſcendiſt ſur luy, il fuit deins age, en ceſt cas lheire poit apres enter ſur lalienee, nient contriſteant le garranty diſcēdiſt, &c. p̄ c̄ q̄ nul lache ſe ſerra adiudg̃ en lheire deins age que il nentra pas ſur lalienee en la vie le tenāt en Dower. Mez

ALſo in the Caſe aforeſaid, if it were ſo that when the Tenant in Dower aliened, &c. his heire was within age, and alſo at the time that the warrantie diſcended vpon him hee was within age, In this Caſe the heire may after enter vpon the Alienee, notwithſtanding the warrantie diſcended, &c. becauſe no Lacheſſe ſhal be adiudged in the heire within age, that he did not enter vpon the Alienee in the life

¶ HEere note this diuerſitie, if the heire bee within age at the time of the diſcent of the Warrantie, he may enter and auoyd the Eſtate either within age, or at any time after his full age: And Littleton ſaith well, That the Enfant in this Caſe may enter vpon the Alienee, for if he bring his Action againſt him, he ſhalbe barred by this warrantie, ſo long as the ſtate whereunto the warrantie is annexed continue, and bee not defeated by entrie of the heire: but if he be within age at the time of the Alienation with warrantie, and become of full age before the diſcent of the Warrantie, the warranty ſhal barre him for euer. Our Author putteth his caſes where the entrie of the Infant is lawfull, (a) for where the entrie of the Infant is not lawfull

(u) 18. E. 4. 13. 35. H. 6. 63. 28. Aſſ. 28. 32. Eng. Gar. 30.

35. H. 6. 63.

(a) 4. H. 7. 9. 35. H. 6. 63. Br. 12. War. 54. 33. H. 8. Tit. War. Br. 84. Li. 1 fo. 67. a. in Archers caſe, & 140. Cinck Leys caſe.

full when the warrantie discendeth, the warrantie doth bind the Enfant, as well as a man of full age, and the reason thereof is, because the state whereunto the warrantie was annexed, continueth and cannot be auoyded but by Action, in which Action the warrantie is a barre: and for the same reason likewise it is of a Feme Couert, if her entrie be not lawful, a warrantie discending on her during the Couerture doth bind her.

(w) And albeit the husband be within age at the discent of the warrantie, yet if the entry of the wife be take away, the warrantie shal bind the wife.

(w) 18.E.3.3.

(q) And herein a diuersitie is to bee obserued betweene matters of Record done or suffered by an enfant, and matters in Fait, for matters in Fait he shal auoid either within age, or at full age, as hath beene sayd: but matters of Record, as Statutes merchants, & of the staple, Recognisances knowledged by him, or a Fine leuied by him, recouerie against him by default in a reall Action (sauing in Dower) must bee auoyded by him; viz. Statutes, &c. by Audita querela, and the fine and recouerie by writ of Error during his minoritie, and the like. And the reason thereof is, because they are iudiciall Acts, and taken by a Court or a Judge, therefore the nonage of the partie to auoyd the same shall be tried by inspection of Judges, and not by the Countrie. And for that his nonage must be tried by inspection, this cannot be done after his full age: and so is the Law clerely holden at this day, though there be some difference in our Bookes. But if the age be inspected by the Judges, and recorded that he is within age, albeit hee come of full age before the reuersall, yet may it be reuersed after his full age, * And so was it resolued by the whole Court of Kings Bench in the case of Kekewiche.

(q) 20.E.3. Audit.quer.27. F.N.B.104.k. 6.E.3.39. 17.E.3.76. 17.Ass.53.17. 21.E.24.13.E.3.Aud.quer. 26.18.E.3.Infant 61.16.H.7 5.15.E 4.5.8.H.6.30. 1.H.7.15.

6.H.8.Sauer de default Br.50 3.H.6.10. 1.Mar.Dy.104.

* Pasch.13.Ia.R. in the Kings Bench.

If lands had beene giuen to the husband and wife and their heires, and the husband had made a Feoffement to another, to whom a Collaterall Ancestor of the wife had released and died, and the husband died, (and this had beene before the Statute of 32.H.8.) this warrantie had so bound her warrantable right, as shee could not warrant her estate, and claime Dower. Otherwise it is of an Estate determined: for if a Disseisor make a Lease to the husband and wife during the life of the husband, and the husband dieth, she may disagree to this Estate determined, to saue her selfe from dammages. And so note a diuersitie betweene an estate determined, and and an estate bound by warrantie.

si lhẽ fuit deins age al temps del alienation, &c. et puis il deuient al pleine age en la vie de le tenant en Dower, et illint est-eant de pleine age, il nentra pas sur lalienee en la vie de le tenant en Dower, et puis le Tenaunt en Dower morust, &c. la peraduenture lhẽ serra barre per tiel Garrantie, pur ceo que il serra recte sa follie, que il esteant de plein age ne entra pas en la vie de le Tenaunt en Dower, &c.

of Tenant in Dower. But if the Heire were within age at the time of the alienation, &c. and after he commeth to full age in the life of Tenant in Dower, and so being of ful age he doth not enter vpon the Alienee in the life of Tenant in Dower, and after the tenant in Dower dieth, &c. there peraduenture the heir shal be barred by such Warranty, because it shall bee accounted his folly, that hee beeing of full age did not enter in the life of tenãt in dower, &c.

Nul laches serra adiudge en le heire deins age. Laches or Lasches is an old French word for slackenesse, or negligence, or not doing. And the Rule (That no negligence shall be adiudged in an Enfant) is true, where he is thereby to be barred of his entry in respect of a former right, as by a discent, or of his former right, (as Littleton doth heere put an example) by a Warrantie where his entrie is congeable. But otherwise it is of Conditions, charges and penalties going out of, or depending vpon the originall Conueyance, for the Laches or negligence shall be adiudged in those cases as wel in the Infant as in any other.

(y) Vide Pl Com. Stowels Case per totum And see further there, where an Infant being tenant for life or yeares, shall be punished for doing or suffering of waste; and where he claimeth by purchase, a Cessauit shall lie against him, if he pay not his Rent by two yeares. And some haue sayd, If he haue the Tenancie by discent, and he himselfe cesse, a Cessauit doth lie, and he shal not haue his age because it is of his owne Cesser, 31.E.3.Age 54. But other Bookes (as some conceiue them) be against that: Vide 9.Edw.3.50. 28.E.3.99. 14.E.3.Age 88. 2.E.2.Age.112.

(y) Pl.Com.Stowels case. 355, &c.

and

and others, which Bookes doe not proue that the Cessauit doth not lie in that case, but the contrarie, that he shall haue his age to the end, he may at his full age certainly know what to plead, or what arrerages to tender, for the Land was originally charged with the Seigniories and Services,

Sect. 727.

¶ MEs ore per lestatute fait 11.H.7.cap.10. il est ordeine, si ascun feme discontinue, alien, release, ou confirme oue Garrantie ascun terres ou tenements que el tient en dower pur terme de vie, ou en tayle del done sa primer baron, ou de ses Ancesters, ou del done dascun auter seisie al vse le primer baron, ou de ses Ancesters, que touts tiels garranties, &c. serront voides, & q̄ bñ lirroit a cestuy q̄ auoit ceux terres ou tenements apres la mort de m̄ la feme deutrer.

BVt now by the Statute made 11.*H.cap.*10. it is ordained if any woman discontinue, alien, release or confirme with warrantie any Lands or Tenements which shee holdeth in Dower for tearme of life, or in tayle of the gift of her first husband, or of his Ancestors, or of the gift of any other seised to the vse of the first Husband or of his Ancestors, that all such warranties, &c. shall bee void, and that it shall be lawfull for him which hath these Lands or Tenements after the death of the same woman to enter.

¶ THis is an addition to Littleton, and therefore to bee passed over. And hereof sufficient hath beene said before Sect.697.

Sect. 728.

¶ Item il est parle en le fine de l' dit estatute de Glouceſt. que parle del alienation ouesque garrantie fait per le tenant per le curtesie en cest forme. Ensement, en mesme le manner ne soit lheire la feme apres la mort le pere & le mere barre daction, sil demanda lheritage, ou l' mariage, sa mere per briefe Dentre, que son pere aliena en temps sa mere, dont nul fine est leuy en la Court le

ALso it is spoken in the end of the said Statute of *Glocest.* which speaketh of the alienation with Warrantie made by the tenant by the curtesie in this forme. Also, in the same manner, the heire of the woman after the death of the father and mother shall not bee barred of action, if hee demandeth the heritage or the marriage of his Mother by Writ of Entry, that his father aliened in his mothers time,

¶ *Dont nul fine est leuie en le Court le Roy, &c.* Here are three things worthy of observation concerning the construction of Statutes, First, that (a) it is the most naturall and genuine exposition of a Statute to construe one part of the Statute by another part of the same Statute, for that best expresseth the meaning of the makers. As here the question vpon the generall words of the Statute is, whither a fine leuied only by a husband seised in the right of his wife with warrantie shall barre the heire without Assets. And it is well expounded by the former part of the Act, whereby it is enacted, that alienation made by Tenant by the courtesie with warrantie shall not bar the heire, vnlesse Assets descend,

(a) Pl.Com.fol.75. 7.E.3.89.

Vide Bracton lib.4.fol.321. Fleta lib.5.cap.34.

cend. And therefore it should be inconuenient to intend the Statute in such manner, as that he that hath nothing but in the right of his wife should by his fine leuied with warrantie barre the heire without Assets. And this exposition is ex visceribus actus.

Secondly, The wordes of an Act of Parliament must bee taken in a lawfull and rightfull sence, as here the wordes being (whereof no fine is leuied in the Kings Court) are to be vnderstood, whereof no fine is lawfully or rightfully leuied in the Kings Court, And therefore (b) a fine leuied by the Husband alone is not within the meaning of the Statute, for that fine should worke a wrong to the wife, but a fine leuied by the husband and wife is intended by the Statute, for that fine is lawfull and worketh no wrong. (c) So the Statute of W.2.cap.5. sayth (Ita quod Episcopus Ecclesiam conferat) is construed Ita quod Episcopus Ecclesiam legitime conferat, and the like in a number of other Cases in our Bookes. And generally the rule is Quod non præstat impedimentum quod de iure non sortitur effectum.

Thirdly, That construction must be made of a Statute in suppression of the mischiefe, and in aduancement of the remedie, as by this Case it appeareth. For a fine leuied by the Husband only is within the letter of the Law, but the mischiefe was, the heire was barred of the Inheritance of his Mother by the warrantie of his Father without Assets, and this Act intended to apply a remedie, viz. that it should not barre vnlesse there were Assets, and therefore the mischiefe is to be suppressed, and the remedie aduanced. Et qui hæret in littera, hæret in cortice, as often before hath beene said.

Roy: & issint p force de m lestatute, si l baron del feme aliena iheritage, ou mariag sa feme en fee oue garranty, &c. per son fait en pais, ceo est clere ley, que cest garranty ne barrera my iheir, sinon que il nad assets per discent.

whereof no fine is leuied in the kings court And so by force of the same Statute, if the Husband of the wife alien the heritage or mariage of his wife in fee with warrantie, &c. by his Deed in the Countrey, it is cleere Law, that this warrantie shall not barre the heire, vnlesse hee hath assets by Discent.

(b) Pl.Com.246.b. Signior Barkleyes Case. lib.9. fol.26. in case del Abbot de Stratamercella.
(c) 11.H.4.80.9.E.4.12. 21.H.6.28.4.E.4.31. 12.H.4. Formdon 15.

Sect. 729. 730. & 731.

CMes le doubt est, si le baron alienast iheritage sa feme, per fine leuy en la Court l Roy ouesque Garrantie, &c. si ceo barrera iheire sans ascun discent en value. Et quant a ceo, ieo voile icy dire certaine reasons que ieo ay oye dit en cest matter. Jeo ay oye mon Master Sir Richard Newton **iades chief Justice de Common Banke dire vn foits en mesme le Banke, que tiel Garrantie que le baron fait per fine leuie en le Court le Roy, barrera iheire, coment que il ad riens per discent, pur ceo que lestatute dit dont nul fin est leuy en le Court le Roy) et issint per son opinion**

BVt the doubt is, if the husbād alien the heritage of his wife by fine leuied in the Kings Court with warrantie, &c. if this shall barre the heire without any discent in value. And as to this I will here tell certaine reasons, which I haue heard said in this matter. I haue heard my Master Sir *Richard Newton* late Chiefe Iustice of the Common Pleas once say in the same Court, that such Warrantie as the husband maketh by fine leuied in the Kings Court shall barre the heire, albeit hee hath nothing by discent, because the Statute saith (whereof no fine is leuied in the Kings Court) and so by his

opinion cel garrantie per fine demurt vncore vn collaterall Garrantie, come il fuit a le common ley, nient remedy per le dit estatute, pur ceo que l' dit estatute except alienations per fine oue garrantie.

opinion this Warrantie by fine remayneth yet a collaterall warrantie as it was at the Common Law not remedied by the said Statute, because the said Statute excepteth alienations by fine with warranty,

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CEt aſcuns auters ont dit, et vncore diont le contrarie, et ceo eſt lour proofe, q̃ come per m̃ le chapiter de dit eſtatute il eſt ordeine, que le garrantie le tenant per le curteſie ne ſerra my barre al heire, ſinon que il ad aſſets per diſcent, &c. coment que le tenant per le curteſie leuy vn fine de meſmes le tenements oueſque garranty, &c. auxy forment come il poit faire, vncore cel Garranty ne barra my lheire ſinon que il ad aſſets per diſcent, &c. & ieo croy que ceo eſt ley, & pur ceo ils dient, que ſerroit inconuenient dentender le ſtatute e tiel forme, que vn home que nad riẽs forſque en droit ſa feme purroit per fine leuie p luy de meſmes l's tenements queux il ad forſq; en droit ſa feme oue Garrantie, &c. barre lheire de meſmes le tenements ſans aſcun diſcent de fee ſimple, &c. lou le tenant per le curteſie ceo ne puit faire.

AND ſome others haue ſaid, and yet doe ſay the contrarie, and this is their proofe, that as by the ſame Chapter of the ſaid Statute it is ordained that the warrantie of the tenant by the curteſie ſhall bee no bar to the heire, vnleſſe that he hath aſſets by diſcẽt, &c. although that the tenant by the curteſie leuy a fine of the ſame tenements with warrantie, &c. as ſtrongly as hee can, yet this warrantie ſhall not bar the heir, vnleſſe that he hath aſſets by diſcent, &c. And I beleeue that this is Law, and therefore they ſay, that it ſhould be inconuenient to intend the Statute in ſuch manner, as a man that hath nothing but in right of his wife might by fine leuied by him of the ſame Tenements which hee hath but in right of his wife with warranty, &c. barre the heire of the ſame tenements without any diſcent of fee ſimple, &c. where the Tenant by the curteſie cannot doe this.

Sect. 731.

CMEs ils ont dit, que le ſtatute ſerra entend ſolonq; cel forme. s. lou le Statute dit, dont nul fine eſt leuie en Court l' Roy, ceo eſt adire, dont nul loial fine

BVt they haue ſaid that the ſtatute ſhal be intended after this manner, s. where the Statute ſaith, whereof no fine is leuied in the Kings Court, that is to ſay,

fine eſt droiturelment leuy en la Court le Roy, ceo eſt adire, dont nul leial fém eſt droiturelment leuy en la court le Roy: Et ceſt dont nul fine de l'baron et ſa feme ſoit leuie en le Court le Roy, car al temps de le feſang del dit eſtatute, cheſcun eſtate de terres ou tenements que aſcun home ou feme auoit, que diſcenderoit a ſon heire, fuit fee ſimple ſans condition, ou ſur certaine conditions en fait, ou en ley. Et pur ceo que adonques tiel fine poit droiturelment eſtre leuie per le baron et ſa feme, et les heires le baron garronteront, &c. tiel garranty barrera l'heire, et iſſint ils dient que ceſt lentendement de leſtatute, car ſi le baron et ſa fem fieront vn feoffment en fee per fait en pais, ſon heire apres le deceaſe le baron et ſa feme auera briefe Dentre ſur Cui in vita, &c. nient obſtant le garrantie de le baron. donque ſi nul tiel exception fuit fait en leſtatute de le fine leuie, &c. donque l'heire aueroit le briefe Dentre, &c. nient obſtant le fine leuie per le baron & ſa fem, pur ceo q̄ les parolx de leſtatute deuant lexception de fine leuie, &c. ſont generals, &c. ceſtaſcauoir que l'heire la feme apres le mort le pere et la mere ne ſoit barr̄ daction, ſil demaund l'heritage, ou le mariage ſa mere, per briefe Dentre, que ſon pere aliena en temps ſa mere, & iſſint coment que le bazon et la feme alienent per fine. vncore ceo eſt voier, que le baron aliena e temps la mere, et iſſint il ſerroit en caſe de leſtatute, ſinon que tielx parolx fuerent

whereof no lawful fine is rightfully leuied in the Kings Court, and that is, whereof no fine of the husband and his wife is leuied in the Kings Court, for at the time of the making of the ſaid Statute, euery eſtate of lands or tenements that any man or woman had which ſhould deſcēd to his heire, was fee ſimple without condition, or vpon certaine conditions in Deed or in law. And becauſe that then ſuch fine might rightfully bee leuied by the husband and his wife, & the heires of the husband ſhould warrant, &c ſuch warranty ſhall barre the heire, & ſo they ſay that this is the meaning of the ſtatute, for if the husbād & his wife ſhould make a feoffment in fee by Deede in the countrie, his heire after the deceaſe of the husband and wife ſhall haue a Writ of entrie *ſur Cui in vita, &c.* notwithſtanding the warranty of the husband, then if no ſuch exception were made in the ſtatute of the fine leuied, &c. then the heire ſhould haue the Writ of entrie, &c. notwithſtanding the fine leuied by the husband and his wife, becauſe the words of the ſtatute before the exception of the fine leuied, &c. are generall, viz. that the heire of the wife after the death of the father and mother is not barred of action, if hee demand the heritage or the marriage of his mother by writ of entrie, that his father aliened in the time of his mother, and ſo albeit the husband and wife aliened by fine, yet this is true that the husband aliened in the time of the mother, and ſo it ſhould be in that

ront, s. dont nul fine est leuie en la Court le Roy, issint ils dient que ceo est a entender, dont nul fine per le baron et sa feme est leuy en la Court le Roy, le quel est loialment leuie en tiel case, car si les Justices ont conusans, que home que nad riens forsque en droit sa feme voile leuier vn fine en son noisme solement, ils ne voylont, ne vnque deuoient prender tiel fine destre leuie per le baron solement sans sa feme, &c. Ideo Quære de cest matter, &c.

case of the statute, vnlesse that such words were, viz. whereof no fine is leuied in the Kings Court, and so they say that this is to be vnderstood, whereof no fine by the husband and his wife is leuied in the Kings Court, the which is lawfully leuied in such case, for if the Iustices haue knowledge that a man that hath nothing but in the right of his wife will leuie a fine in his name only, they will not, neither ought they to take such fine to bee leuied by the husband alone without his wife, &c. *Ideo quære* of this matter, &c.

¶ *Ceo ay oye mon maister Sir* R. Newton, *&c.* Who was a Gentleman of an ancient family; in Latyn de noua villa, in French de neufe ville, and a reuerend learned Iudge, and worthily aduanced to be chiefe Iustice of the Court of Common pleas, whom our Author remembers with great reuerence, as by his words you may perceiue, calling him his master, and citeth his opinion deliuered once in the Court of Common pleas which our Author heard and obserued (whose example therein, it is necessary for our student to follow) but the latter opinion (as hath beene before obserued) being Littletons owne, is against the opinion of the Lord Newton (d) and the Law is holden clearely with our Author at this day, and our Author (as in all other cases) hath good Authority in Law to warrant his opinion, Nullius hominis authoritas tantum apud nos valere debet, vt meliora non sequeremur si quis attulerit.

(d) *Brak. n.* 321. *Plow. lib.* 5 *cap.* 34. 8. E. 2. *Garr.* 81. 18. E. 3. 51. 7. E. 3. 84. *Pl. Com.* 37.

¶ *Car si les Iustices ount conusance, &c.* Hereby it appeareth (e) that the Iudge, if he knoweth it, ought not to take knowledge of a Fine that worketh a wrong to a third person.

(e) 33. H. 6. 52. 5. E. 3. 56. 2 *Eliz. Dier.* 178. 1. *Mar.* 89. 4. E. 3. 41. 7. *Eliz. Dier* 246. *Vid. Sect.* 87. &c.

¶ *Que serroit inconuenient.* Argumentum ab inconuenienti is very forcible in Law, as often hath beene obserued.

Of the rest of these three Sections sufficient hath beene said before.

Sect. 732.

¶ Item est asauoir, que en ceux parolx, ou lheire demande lheritage, ou le mariage sa mere, cest parol (ou) est vn disiunctiue, et est autant a dire, si lheire demande le heritage sa mere, s. les tenements que sa mere auoit en fee simple per discent, ou per purchase, ou si lheire demaund le mariage sa mere, cest ascauoir, les tenemẽts que

ALso it is to bee vnderstood, that in these words where the heire demands the heritage, or the marriage of his mother, this word (or) is a disiunctiue, and is asmuch to say, if the heire demand the heritage of his mother, *viz.* the tenements that his mother had in fee simple by discent or by purchase, or if the heire demand the mariage of his mother, that is

que fueront dones a ſa mere en frankmariage.

to ſay, the tenements that were giuen to his mother in frankmariage.

¶ Some doe expound heritage of the mother to be the lands which the mother hath by diſcent. And that conſtruction is true, but the Statute by the Authority of Littleton extendeth alſo where the mother hath it by purchaſe in fee ſimple, for ſo ſaith Littleton himſelfe, that this word (Inheritance) is not only intended where a man hath landes by diſcent, but where a man hath a fee ſimple by purchaſe, becauſe his heires may inherite him. And albeit it be true, that the Statute extendeth to an eſtate in Frankmariage acquired by purchaſe, yet doth it extend alſo to all eſtates in tayle, as well by diſcent as by purchaſe, for that Frankmariage is put but for an example.

V. Sect 9.

Sect. 733.

¶ EGo & hæredes mei warrantizabim⁹ & imperpetuũ defendemus. Wherein three things are to be obſerued: Firſt, That Hæredes mei are words of neceſſitie, for otherwiſe the heyres are not bound, (a) Secondly, Though in the clauſe of the warrantie it be not mentioned to whome, &c. yet ſhall it bee intended to the Feoffee. (b) Thirdly, That the Feoffor may by expreſſe words warrant the land for the life of the Feoffee, or of the Feoffor, &c. but the recouerie in value ſhall bee in Fee. (c) Of this Bracton writeth in this manner, Et ego & hæred' mei warrãtizabim⁹ tali et hęredibus ſuis tantum vel tali & hæredibus & aſſignatis, & hæredibus aſſignatorum, vel aſſignatis aſſignatorum, & eorum hæredibus, & acquietabimus & defendemus eos toram terram illam cum pertinentijs, contra omnes gentes, &c. per hoc autem quod dicit (ego & hæredes mei) obligat ſe & hæredes ad warrantiam propinquos, & remotos, præſentes & futuros, & ſuccedentes in infinitum. Per hoc autem quod dicit (Warrantizabimus) ſuſcipit in ſe obligationem ad defendendum ſuum tenementum in poſſeſſione rei datæ & aſſignatos ſuos & eorum hæredes & omnes alios, &c. Per hoc autem quod dicit (acquietabimus) obligat ſe & hæredes ſuos ad acquietandum ſi quis plus petie-

(a) 6.E.2. Vouch. 258. 12.E.2 fo. 262. 14.H.4.15.

(b) 38.E.3.14.

(c) Bract. fo. 37. 238. & li. 5. 380, 381. Brit fo. 106. b. Flet. li. 5. ca. 15. & li 6. ca. 23. 35. H.8.B. Gar. 90. F.N.B. 134. b

Brit. vb. ſup. Flet. vb. ſup. 11.H.6.48. 6.E.2. Gar. 262.

¶ Item come eſt moue en dtũs faits, ceux parolx en Latyne, Ego & Hæredes mei, warrantizabimus, & imperpetuum defendemus, il eſt a veier q̃l effect ad cel parol, Defendemus, en tiels faits, et il ſemble que il nad pas leffect de Garrantie, ne empȝent en luy la cauſe de Garrantie, car ſil iſſint ſerroit, que il pȝent effect ou cauſe de Garrantie, donque il ſȝoit mitte en aſcuns fines leuies en la Court le Roy: Et home ne veiet ceo vnque, que ceſt parol Defendemus, fuit en aſcun fine, mes tanſolement ceſt parol Warrantizabimus, per que ſemble que ceſt parol et Verbe Warrantizo, fait la Garrantie, & eſt la cauſe de Gar-

ALſo where it is contained in diuers Deedes theſe wordes in Latyne, *Ego & Hæredes mei warrantizabimus & imperpetuum defendemus*; it is to be ſeene what effect this word *(Defendemus)* hath in ſuch Deedes: And it ſeemeth that it hath not the effect of Warrantie, nor comprehendeth in it the cauſe of warrantie, for if it ſhould be ſo that it tooke the effect or cauſe of warrantie, then it ſhould bee put into ſome Fines leuied in the Kings court, and a man neuer ſaw, that this word *(Defendemus)* was in any Fine, but onely this word *(Warrantizabimus.)* By which it ſeemeth, That this word and Verbe *(Warrantizo)* maketh the warrantie, and is the

Garrantie, et nul auter Verbe en nostre Ley. cause of warrantie, and no other word in our Law.

rit seruitij vel aliud seruitium quam in carta donationis continetur. Per hoc autem quod dicit (Defendemus) obligat se & hæredes suos ad defendendum si quis velit seruiturem ponere rei datæ contra formam suæ donationis. (d) **Hereby it appeareth, That neither** Defendere **nor** Acquietare **doth create a warranty, but** Warrantizare **onely. And as** Ego & hæredes mei warrantizabimus, &c. **in Latyne doe create a warrantie; so, I and my heires shall warrant, &c. in English, doth create a warrantie also.**

(d) 46.E.3.28.11.H.4.41. 6.E.2.Vouch.262.2.E.4.15.6

(e) If a man be bound to A. in an Obligation, to defend such lands to A. whereof the Obligor had infeoffed him for 12. yeares, &c. in this case if he be ousted by a stranger without being impleaded, the Obligation is forfeit: but if hee bee bound to warrant the land, &c. the Bond is not forfeited, vnlesse the Obligee be impleaded, and then the Obligor must bee readie to warrant, &c.

(e) 2.E.4.15.11.Dor.71.

¶ *Donques il serra mit en ascuns fines, &c.* **Heere** Littleton **draweth** an Argument from the forme & words of a Fine, & his reason is this, That seeing that a Fine is the highest and surest kind of assurance in Law, if Defendemus had the force of a warranty it would haue beene contained in Fines: and on the other side seeing this word Warrantizo is contained in Fines to create a Warrantie, that therefore that word doth implie a warrantie, and not the other.

¶ *Et nul auter Verbe en nostre Ley.* **Heere it appeareth, That no** other Verbe in our Law doth make a Warrantie, but Warrantizo **onely, which is onely appropriated to create a warrantie.**

46.E.3.28. Vi Sect.1.

But, Qui bene distinguit, bene docet, **and here, of necessitie you must distinguish,** * **First, betweene a warrantie annexed to a Freehold or Inheritance,** (whereof Littleton here speaketh) **and a warrantie annexed to a ward, which is a Chattell reall, for there, Grant, Demise, and the like, doe make a Warrantie. And of warranties annexed to Freeholds and Inheritances, some be warranties in Deed, and some be warranties in Law. A warrantie in Deed, or an expresse warrantie,** (whereof Littleton here speaketh) **is created onely by this word** Warrantizo, **but warranties in Law are created by many other words; they be therefore called warranties in Law, because in iudgement of Law they amount to a warrantie without this verb** Warrantizo. (f) **As** Dedi **is a warrantie in Law to the Feoffee and his heires during the life of the Feoffor, but** Concessi **in a Feoffement or Fine implieth no Warrantie. But before the Statute of** Quia emptores terrarum, **if a man had giuen lands by this word** Dedi, **to haue and to hold to him and his heires, of the Donor and his heires, by certaine services, then not onely the Donor but his heires also had beene bound to warrantie. But if before that statute a man had giuen lands by this word** Dedi, **to a man and to his heires for euer, to hold of the chiefe Lord, there the Feoffor had not beene bound to warrantie, but during his life, as at this day he is.**

Sect.697.

* 31 E.3 Vouch.14.12.Rich.2 tit Cont de Vouch 25 29 E.3. 48.40.Edw.3.c.6 Symmonscase 8 E.2.61.12.Ed.3. Vouch 27 Temps E.1. Vouch. 302. 3.H.6.17.

(f) Lestat. de Bigamis cap.6. 2.H.7.7.6.H.7.2 48.b.2.2. 21.E.1.tit.Vouch.290.Fitz. N.B.134.b.6.E.2.Voue.258

And albeit the words of the Statute of Bigamis **be,** In cartis autem vbi continentur (Dedi & concessi, &c.) **yet if** Dedi **be contained alone, it doth import a warrantie, for the Statute doth conclude,** Ipse tamen feoffator in vita sua ratione proprij doni sui tenetur warrantizare. **So as** Dedi **is the word that implieth warrantie, and not** Concessi. **Also where the words of the Statute be further,** sine clausula quæ continet Warrantiam, **the meaning of the Statute is, That** Dedi **doth import a warrantie in Law, albeit there bee an expresse warrantie in the Deede.**

For if a man make a Feoffment by Dedi, **and in the Deed doth warrant the land against I.S. and his heires, yet** Dedi **is a generall warrantie during the life of the Feoffor, and so was the Statute expounded in both poynts,** (g) Hil. 14. El. **in the Court of Common Pleas, which I my selfe heard and obserued.** (h) **And if a man make a Lease for life reseruing a rent, and adde an expresse warrantie, here the expresse warrantie doth not take away the warrantie in Law, for he hath election to vouch by force of either of them. And in** Nokes **Case note a diuersity betweene a warrantie that is a Couenant reall, and a warrantie concerning a Chattell.** (i) **Also this word** Excambium **doth implie a warrantie.**

(g) *Hil.14.El.in Com.Banc.*
(h) *Li.4 fo.80.in Nokes case. 8.E.3 69.9.E.3.15.10.Ed.3 11.20.E.3 Com.de Gar.7. 31.E.3.Vouch.280.32.Ed.3. ib 102 43.E.3.2.2.E.2.Tit. Garrantie 17. 3.E.3.Formedon 44.*
(i) *4.E.2.Vouch 245.22.E.3 2.14 H.6.2.20.H.6.14. Li.4 fo.122.in Bassards Case. 15.E.3 Bar.255.43 Ed.3.3. Li.1 fo.96 Li.5 fol.17.Spencers case. Li.8.fo.75.Sir Griffords case.*

Also a Partition implieth a warrantie in Law, as in the Chapter of Parceners appeareth. And Homage auncestrell doth draw to it selfe warrantie, as hath beene sayd in the Chapter of Homage Auncestrell.

And it is to be obserued, That the warrantie wrought by this word Dedi **is a special warrantie, and extendeth to the heires of the Feoffee during the life of the Donor onely. But vpon the exchange and homage auncestrel the warrantie extendeth reciprocally to the heires, and against the heires of both parties: and in none of the Cases the Assignee shall vouch by force**

of

of any of theſe Warranties, but in the caſe of the exchange and Dedi the Aſſignes ſhall rebutt, but not in the caſe of Homage auncestrell.

(k) And ſo no man ſhall haue a Writ of Contra formam collationis, but onely the Feoffor and his heires which be priuie to the Deed, but an Aſſignee may rebutt by force of the Deede.

(l) If a man make a gift in Tayle or a Leaſe for life of land, by Deed or without Deed, reſeruing a Rent, or of a Rent ſeruice by Deed, this is a Warrantie in Law, and the Donee or Leſſee being impleaded ſhall vouch and recouer in value. And this Warrantie in Law extendeth not onely againſt the Donor or Leſſor, and his heyres, but alſo againſt his Aſſignes of the reuerſion, and ſo likewiſe the Aſſignes of Leſſee for life ſhall take benefit of this Warrantie in Law.

(m) When Dower is aſſigned there is a Warrantie in Law included, that the Tenant in Dower being impleaded, ſhall vouch and recouer in value a third part of the two parts whereof ſhe is dowable.

And it is to be vnderſtood, That a Warrantie in Law and Aſſets is in ſome caſes a good bar.

(n) In a Formedon in the diſcender the Tenant may plead, That the Auncestor of the Demandant exchanged the Land with the Tenant for other Lands taken in exchange, which diſcended to the Demandant, whereunto he hath entred and agreed: or if he hath not entred and agreed vnto the Lands taken in exchange, then the Tenant may plead the Warrantie in Law, and other Aſſets diſcended.

(o) If Tenant in Taile of Lands make a gift in Taile or a Leaſe for life, rendring a Rent, and dieth, and the Iſſue bringeth a Formedon in the diſcender, the Reuerſion and Rent ſhall not barre the Demandant, becauſe by his Formedon he is to defeat the Reuerſion and Rent, Et non poteſt adduci exceptio eiuſdem rei, cuius petitur diſſolutio.

(p) But if other aſſets in Fee ſimple deſcend, then this Warrantie in Law and aſſets is a good barre in the Formedon.

Here foure things are to be obſerued: Firſt, That no Warrantie in Law doth barre any Collaterall title, but is in nature of a Lineall Warrantie: wherein the equitie of the Law is to be obſerued.

Secondly, That an expreſſe Warrantie ſhall neuer binde the heires of him that maketh the Warrantie, vnleſſe (as hath been ſayd) they be named: as for example Littleton here ſayth (Ego & hæredes mei) but in caſe of Warranties in Law, in many caſes the heyres ſhall be bound to Warrantie, albeit they be not named.

Thirdly, That in ſome caſes Warranties in Law doe extend to execution in value, of ſpeciall Lands, and not generally of Lands diſcended in Fee ſimple, as you may ſee at large in my Reports.

(q) Fourthly, That Warranties in Law may be in ſome caſes created without Deed, as vpon gifts in taile, Leaſes for life, Eſchanges, and the like.

And ſeeing ſomewhat hath beene ſayd out of Bracton and other antient Authors, concerning Aſſignees, it is neceſſarie to ſhew who ſhal take aduantage of a Warrantie as Aſſignee by way of Voucher to haue recompence in value.

(r) If a man infeoffe A. and B. to haue and to hold to them and their heires, with a Clauſe of Warrantie, Prædictis A. & B. & eorum hæredibus & aſſignatis: In this caſe if A. dieth, and B. ſurviueth and dieth, and the heire of B. infeoffeth C. hee ſhall vouch as Aſſignee, and yet he is but the Aſſignee of the heyre of one of them, for in iudgement of Law the Aſſignee of the heyre is the Aſſignee of the Auncestor, and ſo the Aſſignee of the Aſſignee ſhall vouch in infinitum, within theſe words, (His Aſſignes.)

(ſ) If a man infeoffeth A. To haue and to hold to him, his heyres and Aſſignes; A. infeoffeth B and his heyres, B dieth, the heyre of B. ſhall vouch as Aſſignee to A. So as heyres of Aſſignees, and Aſſignees of Aſſignes, and Aſſignees of Heyres are within this word (Aſſignes) which ſeemed to be a queſtion in Bractons time. And the Aſſignes ſhall not onely vouch, but alſo haue a Warrantia Cartæ.

If a man doth warrant Land to another without this word (Heyres,) his heyres ſhal not vouch: and regularly if he warrant Land to a man and his heyres, without naming Aſſignes, his Aſſignee ſhal not vouch. (t) But if the father bee infeoffed with warrantie to him and his heyres, the father infeoffeth his eldeſt ſon with warrantie and dieth, the Law giueth to the ſonne aduantage of the warrantie made to his father, becauſe by act in Law the Warrantie betweene the father and the ſonne is extinct.

But note there is a diuerſitie betweene a Warrantie that is a Couenant reall, which bindeth the partie to yeeld lands or Tenements in recompence, and a Couenant annexed to the Land, which is to yeeld but damnages, for that a Couenant is in many Caſes extended further than the Warrantie. As for example:

(u) It hath beene adiudged, That where two Coparceners made partition of Land, and the one made a Couenant with the other, to acquite her and her heires of a Suit that iſſued out

(k) 28. Aſſ. 33. 14. Ven. 4. 5. 18. E. 3. 18. 4. E. 2. Auow. 201 & 202. 19 E. 3. Auow. 201, 202. 11. E. 3. Auow. 100. 30. H. 6. 7. 33. H. 8. Dyer 51. 10. H. 7. 11. b. F. N. B. 163. a. (l) 6. E. 2. Cont. de Voush. 105. 5 E. 3. 67. 4. E. 2. ibid. 102. 6 E. 3. 11. 50. 7. E. 3. 6. 18. E. 3. 8. 22. Ed 3. 3. 3 H. 7. 13. 6. H. 7. 2. 14 E. 3. Gar 32. F. N. B. 134. g. 5. E. 3. 87. 20. E. 3. 111. Counte plea de Gar. 7.

(m) 4. E. 3. 36. 33. Ed 3. tit. Cont. de Vouch. 122. 43. Aſſ. 32 50. E. 3. 7. F. N. B. 149 m.

(n) 14. H. 6. 2. 15. E. 3. Ear. 255.

(o) 38 E. 3. 22. 23. 24. 13. E. 3. Garr. 35.

(p) 16. E. 3. Age 25. 18. E. 3. 8. 31. E. 3. Garr. 29.

Vide lib. 4. fol. 121. Bufards Caſe.

(q) 45. E. 3. 20. b.

(r) 14. E. 3. Garr. 33. 13. E. 1. Garr. 93.

Lib. 5. fol. 17. b in Spencers caſe. 38. E. 3. 21.

(ſ) 12. E. 2. Vouch. 263. 19. E. 2 gar. 85. 13. E. 1. ib. 93 Lib. 5. f. 17 Spencers caſe. 7 E. 3. 34. 10. E. 3. 9. 14. E. 3 Gar. 33. Bract. lib. ſup. 9. Ed. 2 Gar. de Chart. 30. 36. Edw. 3. Gar. 14. H. 8. Dy. 1. F. N. B 135.

(t) 43. E. 3. 23. 26. Ed 3 68. 40. E. 3. 14. 24. P. 3. 36. 21. H. 4. 94. 30. E. 3. 17. 5. E. 3. Age 19. Pl. Com. 418.

(u) 42 E. 3. b. 2 Pinchdens.

out of the land, the couenantee alieneth. In that case the assignee shall haue an action of couenant, and yet he was a stranger to the couenant, because the acquitall did runne with the land.

(w) A seised of the Mannor of D. whereof a Chappell was parcell, a Prior with the assent of his Couent couenanteth by deed indented with A. and his heires to celebrate Diuine Seruice in his said Chappell weekly for the Lord of the said Mannor, and his Seruants, &c. In this case the assignees shall haue an action of Couenant, albeit they were not named, for that the remedie by couenant doth runne with the land to giue dammages to the partie grieued, and was in a manner appurtenant to the Mannor. (y) But if the couenant had beene with a stranger to celebrate Diuine Seruice in the Chappell of A. and his heires, there the assignee shall not haue an action of couenant, for the couenant cannot bee annexed to the Mannor because the couenantee was not seised of the Mannor. See in Spencers Case before remembred diuers other diuersities betweene Warranties, and Couenants, which yeild but dammages

(w) 42.E.3.3.a. Law. Tabenhams case. 2.H.4.6. 6.H.4.1.& 2. Rauls Brabsons Case. Lib.5.fol.17.18. Spencers Case.

(y) 2.H.4.6. Henry Hornes Case.6.H.4.1.Lib.5. fol.17.18.Spencers Case.

And here it is to be obserued, that an assignee of part of the land shall vouche as assignee. (*) As if a man make a feoffment in fee of two Acres to one with Warrantie to him his heires and assignes, if he make a feoffment of one Acre, that feoffee shall vouch as Assignee, for there is a diuersitie betweene the whole estate in part, and part of the estate in the whole, or of any part. As if a man hath a Warrantie to him his heires and assignes, and he make a lease for life, or a gift in tayle, the Lessee or Donee shall not vouch as assignee because he hath not the estate in fee simple whereunto the Warrantie was annexed, but the Lessee for life may pray in ayde, or the Lessee or Donees may vouche the Lessor or Donor, and by this meanes hee shall take aduantage of the Warranty. But if a lease for life, or a gift in tayle be made, the Remaynder ouer in fee, such a Lessee or Donee shall vouche as assignee, because the whole estate is out of the Lessor, and the particular estate, and the Remaynder doe in iudgement of Law to this purpose make but one estate.

(*) 18.E.3.52.10.E.3.58. 5.E.3.40 12.E.3.(counterplea de Voush.42.14 & 3. Voucher 108.5.E.3.ibid.178. 13.E.3.ibid.119.40.E.3.33 41.E.3.Voush.69.& 100 32.E.3.ibid 96. And this diuersitie was agreed Hill.14.Eliz.in Communi Banco, which I heard and obserued.

(a) If a man infeoffe three with warrants to them and their heires, and one of them release to the other two, they shall vouche, but if he had released to one of the other, the warrantie had beene extinct for that part, for he is an assignee.

(a) 40.E.3.14.40. ff.5. 33 H 6.4. 37.H.8 alienation sans licence 31.E.fi 48.

(b) If a man doth warrant Land to two men and their heires, and the one make a feoffment in fee, yet the other shall vouch for his moitie. If a man at this day bee infeoffed with warrantie to him, his heires, and assignes, and he make a gift in tayle, the Remaynder in fee, the Donee make a feoffment in fee, that feoffee shall not vouche as assignee, because no man shall vouche as assignee, but hee that commeth in in priuitie of estate, but hee must vouche his feoffor, and he to vouche as assignee, but such an assignee may rebutte. If the Warrantie be made to a man and his heires without this word (assignes) yet the assignee, or any tenant of the Land may rebutte. And albeit no man shall vouche or haue a Warrantia cartæ either as partie, heire, or assignee, but in priuity of estate, yet any that is in of another estate, bee it by disseisin, abatement, intrusion, vsurpation or otherwise, shall rebutte by force of the warrantie as a thing annexed to the Land which sometime was doubted (c) in our Bookes. But herein is a diuersitie to be obserued when in the Cases aforesaid, hee that rebutteth claymeth vnder the Warranty. And when hee that would rebutte claymeth aboue the Warranty, for there hee shall not rebutte. And therefore if Lands bee giuen to two Brethren in fee simple with a warranty to the eldest and his heires, the eldest dieth without issue, the Suruiuor albeit he bee heire to him, yet shall he neyther vouche nor rebutt, nor haue a Warrantia cartæ, because his title to the Land is by relation aboue the fall of the warrantie, and hee commeth not vnder the estate of him, to whom the warranty is made, as the Disseisor, &c. doth.

(b) 11.H.4.22. 10.E.3.32. 21.E.3.27. Vide Coll.706. 738.& 745.

(c) 38.E.3.21.26.E.3.56 Lib.10.fo.96.b.Seymors case 7.E.3.34.35.8.E.3.10 46.E.3.4.10.E.3.42. 45.E.3.18. 10.Ass.5.35.Ass.9.22.Ass. 39.88.31.Ass.13.

(d) If a man make a gift in tayle at this day, and warrant the Land to him his heires and assignes, and after the Donee makes a feoffment and dieth without issue, the warrantie is expired as to any Voucher or Rebutter, for that the estate in tayle whereunto it was knit is spent: otherwise it is, if the gift and feoffment had beene made before the Statute of Donis conditionalibus, for then both the Donee and Feoffee had a fee simple, and so are our Bookes to be intended in this and the like Cases.

(d) Lib.3.fol.62.63. Lincolne Colledge Case.

(e) If A. be seised of Lands in fee, and B. releaseth vnto him or confirmeth his estate in fee with warrantie to him his heires and assignes; all men agree this warrantie to be good: but some haue holden, that no warranty can be raysed vpon a bare Release or Confirmation without passing some estate or transmutation of possession. (f) But the Law as it appeareth by Littleton himselfe is to the contrarie, and that both the parties, and (as some do hold) his assignee shall vouche, but he that is vouched in that case must be present in Court, and ready to enter into the warrantie and to answere, and the Tenant must shew forth the Deed of Release or Confirmation with warrantie, to the intent the Demaundant may haue an answere thereunto and eyther denie the deed or auoid it, for that at the time of the Confirmation made, he to whom it was made, had nothing in the Land, &c. for otherwise the Demaundant may counterplead the

(e) 14.E.3.Garr.108. 12.H.7.1.

(f) 11.H.4.22. 10.E.3.32. 21.E.3.27. Vide Coll.706. 738.& 745.

W.1.cap 40.

Vide 20.E.1.Statute de vocat. ad war ant.

(g) 22.H.6.15.19.H.6.73. 20.H.6.73. 2.H.4.13. 41.E.3 Garr.15.43.E.3.17. 43.Ass 42.12..Ass .7. 12.E.3.tayle 3.22.E.4.16.b. 44 E.3 10.44.Ass Basingborns.Ass Lib.10.fol 97. Seymors Case.

(h) Lib 3.fol.63. Lincolne Colledge Case.

(i) 29.E.3.70.17.E.2. Iovnder in action.1.11.E.4.8.

(k) 14.H.4.3.

Voucher by the Statute of W.1.viz. that neither Vouches nor any of his Ancestors had any seisin whereof he might make a feoffment. And this is grounded vpon the said Statute of W.1 the words whereof be, Sil neit son garrantie en præsent, que lun voile garranter de son gree, & maintenant enter en respons. Otherwise the Tenant must be driuen to his Warrantia cartæ.

(g) But a warrantie of it selfe cannot enlarge an estate, as if the Lessor by Deed release to his Lesse for life, and warrant the Land to the Lesse and his heires, yet doth not this enlarge his estate.

(h) If a man make a feoffment in fee with Warrantie to him his heires and Assignes by Deed (as it must bee) and the Feoffee enfeoffeth another by paroll, the second Feoffee shall vouche, or haue a Warrantia cartæ (as hath beene said) as assignee, albeit hee hath no deed of the assignement, because the deed comprehending the Warrantie doth extend to the Assignes of the Land, and he is a sufficient assignee albeit he hath no Deed.

(i) If a man infeoffe two, their heires and assignes, and one of them make a feoffment in fee, that Feoffee shall not vouch as Assignee.

If a man make a feoffment in fee to A. his heires and assignes. A. infeoffeth B. in fee, who re-enfeoffeth A. he or his assignes shall neuer vouche, for A. cannot be his owne Assignee. But if B. had infeoffed the heire of A. he may vouche as assignee, for the heire of A may be assignee to A, in as much as he claymeth not as heire.

(k) If a man make a feoffment by deed of Lands to A. To haue and to hold to him and his heires, and bind him and his heires to warrant the Land in forma prædicta, this Warrantie shall extend to the feoffee and his heires. But if he had warranted the Land to the feoffee, the Warranty had not extended to his heires, except the words had beene to him and his heires.

If a man letteth Lands for life the Remaynder in tayle, the Remaynder eadem forma, this is a good estate tayle, quia idem semper refertur proximo præcedenti.

Section 734.

¶ Item si tenant en taile soit seisie ds terres deuisables per testament solonque le custome, &c. et le tenant en tayle alien meſmes les tenements a son frere en fee, et ad issue, et deuie, & puis son frere deuisa per son testament meſmes les tenements a vn auter en fee, et oblig luy et ses heires a garranty, &c. et mozust sans issue, il semble que cest Garrantie ne barrera my lissue en tayle, sil voit sues son briefe de Formedon, pur ceo que cest Garrantie ne discend my al issue en le tayle, entant q̄ le vncle del issue ne fuit my oblige a le Garrantie en sa vic:ne que il ne puisloit Garranter les tenemēts en sa vie, entant que le deuise ne puisloit prender aleun execution ou effect, forsque apres son decease. Et entant que le vncle en son vie ne fuit tenus de Garranter, tiel Garrantie ne poit discender

ALso, if tenant in taile be seised of Lands deuisable by Testament after the custome &c. and the tenant in the taile alieneth the same tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth by his Testament the same tenements to another in fee, and bindeth him and his heires to warrantie, &c. and dieth without issue, it seemeth that this Warrantie shall not barre the issue in the taile, if he will sue his Writ of *Formedon*, because that this Warrantie shall not descend to the issue in taile, insomuch as the Vncle of the issue was not bound to the same warrantie in his life time: neither could hee warrant the tenements in his life, insomuch as the Deuise could not take any execution or effect vntill after his decease. And insomuch as the Vncle in his life was not

der de luy al iſſue en le tayle, &c. car nul choſe poit diſcender del auncеſter a ſon heire, ſinon que meſme ceo fuit en launceſter.

held to warrantie, ſuch warrantie may not diſcend from him to the iſſue in the taile, &c. for nothing can diſcend from the Anceſtor to his heire, vnleſſe the ſame were in the Anceſtor.

CHere our Author declareth one of the Maximes of the Common Law, that the heire ſhall neuer be bound to any expreſſe Warranty, but where the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were not bound, it cannot deſcend vpon the heire, which is the reaſon here yelded by Littleton. (l) If a man make a Feoffment in fee, and binde his heires to Warranty, this is voyde by the Warrant of this Maxime, as to the heire, becauſe the Anceſtor himſelfe was not bound. Alſo if a man binde his heires to pay a ſumme of money, this is voide. And of the other ſide if a man binde himſelfe to Warranty, and binde not his heires, they be not bound, for he muſt ſay, as it appeareth before, Ego & hæredes mei warrantizabimus, &c. (m) And Fleta ſaith, Nota quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, præterquam debita regis tantum: A fortiori in caſe of Warranty, which is in the realty.

(l) 31.E.1.Grant 85.

Fra. Fen, lib.2.fo.37.238. Britton, fo.106.b. (m) Fleta lib.2.ca.55. Britton fo 65.b. 11.H.6.48.

But a Warranty in Law may binde the heire, although it neuer bound the Anceſtor, and may be created by a Laſt Will and teſtament. (n) As if a man deuiſe lands to a man for life or in taile reſerving a rent, the Deuiſee for life or in taile ſhall take aduantage of this Warrantie in Law, albeit the Anceſtor was not bounden, and ſhall binde his heires alſo to warrantie although they be not named. Alſo an expreſſe warrantie cannot bee created without Deede, and a Will in writing is no Deede, and therefore an expreſſe warrantie cannot bee created by Will.

(n) 18.E.3.8.

Sect. 735.736.

CAr vn garrantie ne poit aler ſolonque la nature des tenements per le cuſtome, &c. mes tant ſolement ſolonque le forme del Common ley. Car ſi le tenant en taile ſoit ſeiſie des tenements en Burgh Engliſh, lou le cuſtome eſt, que touts les tenemēts deins meſm̄ le Borough, deuoyent diſcender a le fits puiſne, et il diſcontinua le tayle oue garrantie, &c. et ad iſſue deux fits, et mourust ſeiſie des auters terres ou tenements en meſme le burgh en fee ſimple a le value, ou pluis de les tenements tailes, &c. vncore le puiſn̄ fits auera vn Formedon de les terres tailes, et ne ſerra my bar̄ per le garranty ſon pere, coment que aſſets a luy diſcendiſt en fee ſimple de meſme le pere, ſolonq̄ le

ALſo a Warranty cannot goe according to the nature of the tenements by the cuſtome, &c. but only according to the forme of the Common Law. For if the tenant in taile bee ſeiſed of tenements in Borough Engliſh, where the cuſtome is, that all the tenements within the ſame Borough ought to diſcend to the youngeſt ſonne, and hee diſcontinueth the taile with warranty, &c. and hath iſſue two ſonnes, and dyeth ſeiſed of other lands or tenements in the ſame Borough in fee ſimple to the value or more of the lands entailed, &c. yet the youngeſt ſonne ſhall haue a *Formedon* of the lands tailed, and ſhall not bee barred by the warranty of his father, albeit aſſets diſcended to him in fee ſimple from his ſaid father

le cuſtome, &c. pur ceo que le garrantie diſcendiſt a ſon eigne frer̃ que eſt en pleine vie, et nemy ſur le puiſne. Et en meſme le maner eſt de collaterall garrantie fait de tiels tenements, lou le garrãtie diſcendiſt ſur leigne fits, &c. ceo ne barrera my le puiſne fits, &c.

according to the cuſtome, &c. becauſe the wartanty diſcendeth vpon his elder brother who is in full life, and not vpon the youngeſt. And in the ſame manner is it of collaterall warrantie made of ſuch tenements where the warranty diſcendeth vpõ the eldeſt ſon, &c. this ſhal not barre the younger ſon, &c.

Sect.736.

¶ EN meſme le maner eſt de tenements en le Countie de Kent, queux ſont appelles Gauelkind, les queux tenemẽts ſont departibles enter les frer̃s, &c. ſolonque la cuſtome, ſi alcun tiel garrantie ſoit fait per ſon aunceſter, tiel garrantie diſcendera tantſolement al heire que eſt heire al common ley, ceſtaſcauoir al eigne frere, ſolonque la conuſans del common ley, et nemy a touts les heirs queux ſont heires de tiels tenements ſolonque le cuſtome.

¶ IN the ſame manner is it of lands in the County of Kent, that are called Gauelkinde, which lands are deuidable betweene the brothers, &c. according to the cuſtome, if any ſuch warranty bee made by his Anceſtor, ſuch warranty ſhall deſcend only to the heire which is heire at the Common law, that is to ſay, to the elder brother, according to the conuſance of the Common Law, and not to all the heires that are heires of ſuch tenements according to the cuſtome.

Vid Sect.603.718.& 737.

(n) 11.E.3.Dr.7. 31.H.7.12.
(o) 17.E.3.Iount.41. 16.H.7.13. 29.E.3.46. 12.H.7.3. 22.E.3.1. 17.E.3.8. 30.E.3.40. 19.H.6.55. lib.3.fo.14. Mathew Herberts caſe.

¶ HEreupon a diuerſitie is to be obſerued betweene the Lien reall, and the Lien perſonall; For the Lien reall, as the warranty, doth euer diſcend to the heire at the Common Law, (n) but the Lien perſonall doth binde the ſpeciall heires, as all the heires in Gauelkinde, and the heire on the part of the mother, as hath beene ſaid.

(o) If two men make a Feoffment in fee with a warranty, and the one die, the Feoffee cannot vouche the ſuruiuor only, but the heire of him that is dead alſo, but otherwiſe if two ioyntly binde themſelues in an Obligation, and the one die, the ſuruiuor only ſhall be charged.

Sect. 737.

¶ ITem, ſi tenant en le taile ad iſſue deux files per diuers venters, et moruſt, & les files entront, et vn eſtrange eux diſſeiſiſt de meſmes les tenements, et lun de eux releſſa per ſon fait a le diſſeiſor tout ſon droit, et oblige luy et ſes heires a garranty, et moruſt ſans iſſue, en ceſt caſe la ſoer

ALſo if Tenant in taile hath iſſue two daughters by diuers venters and dieth, & the daughters enter, & a ſtranger diſſeiſeth them of the ſame tenements, and one of them releaſeth by her Deed to the diſſeiſor all her right, and binde her and her heires to warranty, and die without iſſue. In this caſe the

ſoer que ſuruelquiſt poit bien enter et ouſter le diſſeiſor de touts les tenements, pur ceo que tiel garranty neſt pas diſcontinuance, ne collateral garrantie a la ſoer que ſuruelquiſt, pur ceo que ils ſont de demy ſanke, et lun ne poit eſtre heire a lauter, ſolonque le cours del Common ley. Mes auterment eſt, iou y ſont files del tenant en taile per vn meſme venter.

ſiſter which ſuruiueth may well enter, and ouſt the diſſeiſor of all the tenements, becauſe ſuch warrantie is no diſcontinuance nor collaterall warrantie to the ſiſter that ſuruiueth, for that they are of halfe blood, and the one cannot bee heire to the other according to the courſe of the Common Lawe. But otherwiſe it is where there bee daughters of tenant in taile by one venter.

¶ The reaſon of this is in reſpect of the halfe blood, whereof ſufficient hath beene ſaid in the firſt booke in the Chapter of fee ſimple.

Two brothers bee by demy venters, the eldeſt releaſeth with Warranty to the Diſſeiſor of the Vncle, and dyeth without iſſue, the Vncle dyeth, the Warranty is remoued, and the younger brother may enter into the land.

Section 738.

¶ Item ſi tenant en taile leſſa les tenements a vn home pur terme de vie, le remainder a vn auter en fee, et vn collaterall aunceſter confirma le ſtate del tenant a term̃ de vie, & oblige luy & ſes heires a garranty pur terme de vie del tenant a terme de vie & mozuſt, & le tenant en taile ad iſſue, & deuie, ozе liſſue eſt barre a demander les tenements per briefe de Formedon, durant le vie le tenant a terme de vie, per cauſe del collateral garrantie diſcendu ſur le iſſue en le taile. Mes apres le deceaſe de le

ALſo if tenant in taile letteth the Lands to a man for terme of life, the remainder to another in fee, and a collaterall Anceſtor confirmeth the ſtate of the tenant for life, and bindeth him and his heires to warranty for terme of the life of the tenant for life, and dyeth, and the tenant in taile hath iſſue & dies, now the iſſue is barred to demand the tenements by writ of *Formedon* during the life of tenant for life, becauſe of the collaterall warranty diſcended vpon the iſſue in taile. But after the deceaſe of the tenant for life,

¶ Here it appeareth that a warrantie may be rayſed by a Confirmation which tranſferreth neither eſtate nor right, whereof ſufficient hath beene ſaid before. *Vid. Sect. 733. & 738.*

¶ *A garranty pur terme de vie, &c.* (p) This proueth that a Warranty may bee limitted, and that a man may warrant Lands aſwell for terme of life, or in taile, as in fee. (p) 38.E.3.14. 16.E.3. Vmab. 87.

If Tenant in fee ſimple that hath a warrantie for life either by an expreſſe warranty, or by Dedi, be impleaded and vouche, hee ſhall recouer a fee ſimple in value albeit his warranty were but for terme of life, becauſe the warranty extended in that caſe to the whole eſtate of the Feffee in fee ſimple, but in the caſe that Littleton here putteth, the Tenant for life ſhall recouer in value but an eſtate for life, becauſe the warranty doth extend to that eſtate only.

¶ *Vn briefe de Formedon, &c.* Here is implyed that a Collaterall Warrantie

Warrantie giueth no right, but ſhall barre onely for life, and after the partie is reſtored to his Action.

It is alſo to bee obſerued, That a Warrantie may diſcend to the heyres of him that made it during the life of another.

tenant a term de vie, iſſue auera vn briefe de Formedon, &c.

the iſſue ſhall haue a Writ of *Formedon*, &c.

Section 739.

CEt ſur ceo ieo aye oye vn reaſon, que cel caſe prouera vn auter caſe, ſ, ſi vn home leſſa ſes terres a vn auter, A auer et tener a luy et a ſes heires pur terme dauter vie, et le Leſſee morust viuant celuy a que vie, &c. et vn Eſtrange enter en la Terre que le heire le Leſſee luy poit ouſter, &c. pur ceo que en le caſe procheine auantdit, entant que home poit obliger luy et ſes heyres a Garranty al Tenant a terme de vie tantſolement durant la vie le Tenant a terme de vie, & cel Garrantie diſcendiſt al heyre celuy, que fiſt le Garrantie, le quel Garrantie neſt pas Garrantie denheritance, mes tantſolement pur terme dauter vie, per meſme le reaſon lou Tenements ſont leſſes a vn Home, A auer et tener a luy et a ſes heyres pur terme dauter vie, ſi le Leſſee morust, viuant celuy a que vie, ſon heire auera les Tenements, viuant celuy a que vie, &c. car ont dit, Que ſi home grãt vn annuitie a vn auter, A auer et perceiuer a luy et a ſes heyres pur terme dauter vie, ſi le Grantee morust, &c. que apres ſon mort ſon Heyre auera lannuitie durant la vie celuy a que vie, &c. Quære de iſta materia.

AND vpon this I haue heard a reaſon, That this Caſe will prooue another Caſe, *viz.* If a man letteth his Lands to another, To haue and to hold to him and to his heires for terme of anothers life, and the Leſſee dieth, liuing *Celuy a que vie, &c.* and a ſtranger entreth into the land, That the Heyre of the Leſſee may put him out, &c. becauſe in the caſe next aforeſayd, in as much as a man may bind him and his heires to warrantie to Tenant for life onely, during the life of the Tenant for life, and this warrantie diſcendeth to the Heire of him which made the warranty, the which Warrantie is no Warrantie of Inheritance, but only for terme of anothers life. By the ſame reaſon where Lands are let to a man, To haue and to hold to him and his Heires for terme of anothers life, if the Leſſee die, liuing *Celuy a que vie*, his Heyres ſhall haue the Lands, liuing *Celuy a que vie, &c.* For they haue ſayd, That if a man grant an Annuitie to another, To haue and to take to him and his Heyres for terme of anothers life, if the Grantee die, &c. That after his death his heyre ſhall haue the Annuitie during the life of *Celuy a que vie, &c. Quære de iſta materia.*

¶ *Eo ay oye vn reason.* Here our Student is taught after the example of our Author, to obserue euery thing that is worth the noting.

¶ *Si vn home lessa terres a vn auter, &c.* This case is without question, (q) That the heyre of the Lessee shall haue the land to preuent an Occupant. And so it is (as Littleton here sayth) in case of an Annuitie, or of any other thing that lieth in Grant, whereof there can be no Occupant. And of this somewhat hath beene sayd in the Chapter of Discents.

(q) 17.E.3.48.18.Ed.3.12. 11.H.4.42.7 H.4.46. 8.H.4.15. Dy.8.El.253. 18.H.8.3.27.H.8. 21.H.8. 1st Estates Br. 50.19.Ed.3. 1st. account 56.33. Ass.p.17. 22.H.6.33. 39.E.3.37. Vid. Sect.387.

Sect. 740.

¶ MEs lou tiel Lease ou Grant est fait a vn home et a ses heires pur terme dans, en cest Case lheire le Lessee ou le Grantee nauera vnques aps la mort le Lessee, ou le Grantee ceo que est issint lesse ou grant, pur ceo que est chattel real, et chateux realx per le common Ley viendra al Executors del grantee, ou del Lessee, et nemy al heyre.

BVt where such Lease or Grant is made to a man and to his heyrs for terme of yeares; In this case the heire of the Lessee or the Grauntee shall not after the death of the Lessee or the grantee haue that which is so let or granted, because it is a Chattel reall, and Chattels realls by the Common Law shall come to the Executors of the grantee, or of the Lessee, and not to the Heire.

¶ HEre is a generall rule, That Chatteis realls as wel as Chatteis personalls shall goe to the Executors or Administrators of the Lesse, and not to his heyres. For as Estates of Inheritance or Freehold discendible shall goe to the heyre, so Chattels, as well reall as personall, shall goe to the Executors or Administrators.

11.E.3.tit.Ass.88. 11.Ass.21 10.El.Dy.276.

(r) But if the Kings Tenant by Knights seruice in Capite be seised of a Mannor, whereunto an Aduowson is appendant, and the church becomes voyd, the Tenant dieth, his heyre within age, the king shall present to the Church, and not the Executor or Administrator: but if the land be holden of a Common Person, in that Case the Executor shall present, and not the Gardein.

(r) 24.E.3.26. F.N.B.33.b. F.N.B.34.a.

(s) If a Bishop hath a ward laine and dieth, the King shall not haue the ward nor the Successor, but the Executor, and the ward shall be Assets in his hands. So it is of Heriot, Relieke, and the like. (t) But if a Church become voyd in the life of a Bishop, and so remain vntill after his decease, the King shall present thereunto, and not the Executor or Administrator, for nothing can be taken for a presentment, and therefore it is no assets.

(s) 40 Ed 3.14.

(t) 9.H 6.58. 11.H.4.7.

Sect. 741.

¶ ITem en aleuns cases il poit estre, que coment que vn collaterall Garrantie soit fait en fee, &c. vncore tiel Garrantie poit estre defeat, et anient. Sicome te-

ALso in some cases it may be, That albeit a collateral warrantie be made in Fee, &c. yet such a Warranty may be defeated and taken away: As if Tenant in Tayle discontinue the Tayle

¶ *Et morust sans Issue, &c.* Here (as before in this Chapter hath beene noted) the Collaterall warrantie doth discend vpon the Issue in Tayle, before any right doth discend vnto him, wherein this Diuersitie is to bee obserued: Where the right is in esse in any of the Ancestors of the heyre, at the time of the discent

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cent of the Collaterall warrantie, there albeit the warranty diſcend firſt, & after the right doth diſcend, the Collateral warrantie ſhall binde, as here in this caſe of our Author expreſly appeareth. But where the right is not in eſſe in the heire, or any of his Anceſtors, at the time of the fall of the warrantie, there it ſhall not binde.

(u) 7.E.3.48. 30.H.8.42.

(u) A ſtif Lord and Tenant be; and the Tenant make a Feoffment in fee with warrantie, and after the Feoffee purchaſe the Seigniory, and after the Tenant ceſſe, the Lord ſhall haue a Ceſſauit, for a warrantie doth extend to Rights precedent, and neuer to any right that cõmenceth after the warranty, whereof more ſhall be ſaid in this Section. Alſo a warranty ſhall neuer barre any eſtate that is in poſſeſſion, reuerſion or remainder, that is not deueſted, diſplaced, or turned to a right before, or at the time of the fall of the warrantie.

nant en taile diſcontinue le taile en fee, et le diſcontinuee eſt diſſeiſie, et le frere del tenãt en le taile releſſa per ſon fait a le diſſeiſor tout ſon droit, &c. oue garrantie en fee, & morust ſans iſſue, & le tenant en l' taile ad iſſue et deuie, ore liſſue eſt barr̃ de ſon action per force d̃ collareral garrantie diſcendue ſur luy, mes ſi apres ceo le diſcontinuee enter ſur le diſſeiſor, donque poit lheire en le taile auer bien ſon action de Formedon, &c. pur ceo que l' garrantie eſt aniente et defeat̃, car quãt garranty eſt fait a vn home ſur eſtate que adonques il auoit, ſi leſtate ſoit defeate le Garrantie eſt defeate.

in fee, and the Diſcontinuee is diſſeiſed, and the brother of the tenant in taile releaſeth by his Deed to the Diſſeiſor all his right, &c. with warranty in fee, and dyeth without iſſue, and the tenant in taile hath iſſue and die, now the iſſue is barred of his action by force of the collaterall warrantie deſcended vpon him. But if afterwards the Diſcontinuee entreth vpon the Diſſeiſor, then may the heire in taile haue well his action of *Formedon &c.* becauſe the warranty is taken away and defeated, for when a warrantie is made to a man vpon an eſtate which hee then had, if the eſtate be defeated the Warranty is defeated.

(w) Lib.1.fo.67. Archers caſe.

(w) If a Leaſe for life be made to the Father, the remainder to his next heire, the Father is diſſeiſed and releaſeth with Warranty and dyeth, this ſhall barre the heire, although the warranty doth fail, and the remainder commeth in eſſe at one time.

(y) Temp. E.1. Voucher 296. 31.Aſſ.13. 22.Aſſ.36. 41.Aſſ 6. 33.E.3. tit. Garr.74. lib.10.fo.97. E.Seymors caſe.

(y) If there be Father and Sonne, and the Sonne hath a Rent ſeruice, ſuite to a Mill, Rent charge, Rent Secke, Common of paſture, or other profit apprender out of the land of the Father, and the Father maketh a Feoffment in fee with warranty, and dyeth, this ſhall not barre the Sonne of the Rent, common, or other profit apprender, quamuis clauſula ſpecialis warrantie vel acquietancie in cartis tenentium, inſeratur quia in tali caſu tranſit terra cum onere: and he that is in ſeiſin or poſſeſſion need not to make any Entrie or Claime: and albeit the Sonne after the Feoffment with warranty, and before the death of the Father had beene diſſeiſed, and ſo being out of poſſeſſion the warrantie diſcended vpon him, yet the warranty ſhould not binde him, becauſe at the time of the warrantie made, the Sonne was in poſſeſſion. (*) So if my Collaterall Anceſtor releaſe to my Tenant for life, this ſhall not binde my Reuerſion or Remainder, becauſe that the Reuerſion or Remainder continued in me. But if he that hath a Rent Common, or any profit out of the Land in taile, diſſeiſe the Tenant of the land, and maketh a Feoffment of the land, and warrant the land to the Feoffee and his heires, (a) regularly the warranty doth extend to all things iſſuing out of the land, that is to ſay, to warrant the land in ſuch plight and manner, as it was at in the hand of the Feoffor, at the time of the Feoffment with warranty, and the Feoffee ſhall vouche, as of lands diſcharged of the rent &c. at the time of the Feoffment made.

(*) 45.E.3.31. 21.H.7.11.

Vid.Bell.698.

(a) 21.E.4.26. 21.H.7.9. 3.H.7.4. 7.H.4.17. 30.H.8.Dier 42. 30.E.3.30. 9.E.3.78. 45.E.3. Voucher 72. F.N.B.125. 14.H.8.6.

A woman that hath a Rent charge in fee entermarieth with the Tenant of the Land, an eſtranger releaſeth to the Tenant of the Land with warrantie, he ſhall not take aduantage of this warrantie eyther by Voucher or Warrantia cartæ, for the wife, if her huſband die, or the heire of the wife ſuing the huſband, cannot haue an action for the Rent vpon a Title before the

the warrantie made, for if the heire of the wife bring an Assise of Mordanceſter, this action is grounded after the warrantie, whereunto as hath beene ſaid, the warrantie ſhall not extend.

So it is if the Grantee of the Rent grant it to the Tenant of the Land vpon condition, which maketh a feoffment of the Land with warrantie, this warrantie cannot extend to the Rent, albeit the feoffment was made of the Land diſcharged of the Rent, for if the condition be broken, and the Grantor be intituled to an Action, this muſt of neceſſitie bee grounded after the warrantie made.

But in the Caſe aforeſaid, when the woman Grantee of the Rent marrieth with the Tenant, and the Tenant maketh a feoffment in fee with warrantie, and dieth, in a Cui in vita brought by the wife (as by Law ſhe may) (b) the feoffee ſhall vouche as of Lands diſcharged at the time of the warranty made for that her title is Paramount, ſo if tenant in tayle of a Rent charge purchaſe the Land, and make a feoffment with warrantie, if the iſſue bring a Formedon of the Rent, the Tenant ſhall vouche Cauſa qua ſupra.

(b) 7.H.4.17.

(*) But ſome doe hold, that a man ſhall not vouche, &c. as of Land diſcharged of a Rent Seruice.

(*) 10.E.4.9.b. 18.E.3.55 44.E.3.19.

(c) Alſo no warrantie doth extend vnto meere and naked Titles, as by force of a condition with clauſe of re-entrie, Exchange, Mortmaine, conſent to the rauiſhez and the like, becauſe that for theſe no action doth lie, and if no action can bee brought, there can bee neither Voucher, Writ of Warrantia cartæ, nor Rebutter, and they continue in ſuch plight and eſſence as they were by their originall creation, and by no Act can be diſplaced or deueſted out of their originall eſſence, and therefore cannot be bound by any warrantie.

(c) Lib.10.fo.57. E.Seymours caſe. 22.Aſſ.pl.38. 31.Aſſ.p.13. 41.Aſſ.p.6. 33.E.3.Garr.74.

(d) And albeit a woman may haue a Writ of Dower to recouer her Dower, yet becauſe her title of Dower cannot be deueſted out of the originall eſſence, a collaterall warrantie of the Anceſtor of the woman ſhall not barre her. So it is of a feoffment Cauſa matrimonij prælocuti.

(d) 34.E.3.tit.droit 72. 21.E.4.82.

(e) A warranty doth not extend to any Leaſe though it be for many thouſand yeares, or to eſtates of Tenant by Statute Staple, or Merchant, or Elegit, or any other Chattle, but only to Freehold or Inheritances, as it appeareth in all Littleton's Caſes which hee putteth in this Chapter. And this is the reaſon, that in all Actions which Leſſee for yeares may haue, a warranty cannot be pleaded in barre, as in an Action of Treſpaſſe, or vpon the Statute of 5.R.2. and the like. But in thoſe Actions when the Freehold or Inheritance doe come in queſtion, there the warranty may be pleaded. But in ſuch Actions which none but a Tenant of the Freehold can haue, as vpon the Statute of 8.H.6. Aſſiſe or the like, there a warrantie may be pleaded in barre.

(e) 21.E.4.18.82. 1.H.7.12.22. 11.H.7.13.16 20.H.7.2.b. 14.H.7.22. 43.E.3.25.per Finch.in quer.Imp.15.H.7.9. Lib.10 fo.97.

¶ *Quant Garrantie eſt fait a vn home ſur eſtate, que adonques il auoit, ſi leſtate ſoit defeat, le Garrantie eſt defeat.* Here it appeareth, that although a collaterall Warrantie be diſcended, (f) yet if the ſtate whereunto the warranty was annexed be defeated, albeit it be by a meere ſtranger, (as in this caſe that Littleton here put by the diſcontinuee) the warranty is defeated, and although the Diſcontinuence remaine and no remitter wrought to the heire, yet the warrantie is defeated, and barre removed, ſo as the iſſue in tayle may haue his Formedon and recouer the Land. Sublato Principali tollitur adiunctum.

(f) 3.H.7.9.b. 16.E.3. tit. Continuall Clame 16. 9.H.4.8. Pl.Com.158.

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¶ EN meſme le manner eſt, ſi le diſcontinuee fait feoffement en fee, reſeruant a luy vn certaine rent, & put default de payment vn re-entry, &c. & vn collaterall Garranty de anceſter eſt fait a celuy feoffee q̃ ad eſtate ſur condition, &c. & mourſt ſans iſſue, coment que cel Garrantie diſcendeſt ſur liſſue ẽ taile, vncore ſi apres le rent ſoit arere & le diſ-

IN the ſame manner it is if the diſcontinuee make a feoffmẽt in fee reſeruing to him a certain rent, and for default of payment a reentrie, &c. and a collateral warrantie of the Anceſtor is made to the feoffee that hath the eſtate vpon condition, &c. and dieth without iſſue, albeit that this warranty ſhall diſcend vpon the iſſue in tayle, yet if after the rent be behind, and the

discontinuee entra en la terre, adonque auera lissue en tayle son recouery per briefe de Formedon, pur ceo que le collaterall garrantie est defeat. Et issint si ascun tiel collateral garranty soit pleé enuers lissue en le tayle, en son action de Formedon, il poit mẽer le matter come est auantdit, coment le garrantie est defeat, &c. & issint il poit bien maintener son action, &c.

discontinuee enter into the Land, then shall the issue in taile haue his recouery by Writ of *Formedon*, becausse the collaterall warranty is defeated. And so if any such collateral warranty be pleaded against the issue in tayle in his action of *Formedon* he may shew the matter as is aforesaid, how the warrantie is defeated, &c. and so he may wel maintaine his action, &c.

HEre Littleton putteth another case vpon the same ground and reason, viz. where the state whereunto the warranty is annexed, is defeated, there the warranty it selfe is defeated also, which is one of the maximes of the Common Law.

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Item si ten̄ en taile fait vn feoffment a son vncle, & puis luncle fait vn feoffment en fee ouesq; garranty, &c. a vn auter, et puis le feoffee del vncle enfeoffa areremaine luncle en fee, & puis luncle enfeoffa vn estrange ẽ fee sans garranty & mozust sauns issue, & le tenant en tayle mozust, si issue en le tayle voyle pozr̄ son br̄ de Formedon, enuers lestrange q̄ fuit le darrein feoffee, & ceo per luncle, lissue ne serra vnque barre per le garranty que fuit fait per le vncle al dit prim̄er feoffee de son vncle, pur ceo que le dit garrantie fuit defeat & anient, p̄ ceo que luncle a luy reprist cy grand estate de son prim̄er feoffee a que le garranty fuit fait, sicome m̄ le feoffee auoit de luy. Et la cause p̄ que le garranty est anient en ceo cas, est ceo, s. que si le garranty estoieroit en sa force, dongz luncl' garrantet̄ a luy mesm̄, q̄ ne poit estre.

ALso if Tenant in tayle make a feoffment to his vncle, and after the vncle make a feoffment in fee with warrantie, &c. to another, and after the feoffee of the Vncle doth re-enfeoffe againe the Vncle in fee, and after the Vncle enfeoffeth a stranger in fee without warrantie, and dieth without issue, and the Tenant in tayle dieth, if the issue in tayle will bring his Writ of *Formedon* against the stranger that was the last feoffee, and that by the Vncle, the issue shall not be barred by the warranty that was made by the Vncle to the first feoffee of his Vncle, for that the said warrantie was defeated and taken away becausse the Vncle tooke backe to him as great an estate from his first feoffee to whom the Warranty was made, as the same feoffee had from him. And the cause why the warrantie is defeated, is this, *viz.* that if the Warrantie should stand in his force, then the Vncle should warrant to himselfe which cannot bee.

Hen

HEre Littleton putteth another case, where a warranty may be defeated, as when the Vncle taketh backe as large an estate, as he had made, the Warrantie is defeated because he cannot warrant land to himselfe. (g) And so it is if the Vncle had made the warrantie to the feoffee his heires and assignes, and taken backe an estate in fee, and after infeoffed another, yet the warrantie is defeated for that he cannot be assignee to himselfe, and a man shall not regulary vouche himselfe as assignee of a fee simple, and the Law will not suffer things inuitle and vnprofitable. (h) And yet if the father be infeoffed with warrantie to him and his heires, the father infeoffeth his heire apparant in fee and dieth, he (as it hath been said) shall vouch himselfe, and the heire in borow English by reason the act in Law determined the warrantie betweene the Father and the Sonne.

(i) But if a man maketh a feoffment in fee with warranty to the feoffee his heires and assignes, and the feoffee re-enfeoffeth the feoffor and his wife, or the feoffor and any other stranger, the warrantie remayneth still, or if two doe make a feoffment with warrantie to one and his heires and assignes, and the feoffee re-enfeoffe one of the feoffors, the warrantie doth also remayne.

(g) *Temps E.1. Voucher 266. 40.E.3.14. 44.E.3.38. 25.E.3.43.b. 26.E.3.68. 14.E.3.Vouch.106. 16.E.3. Voucher 87. 19.E.3.Vouchee 122. 17.E.3.73.74. 20.H.6.29.*

(h) *40 E.3 14.a. 41.E.3.25.a.*

(i) *11.H.4.20.42. 17.E.3.47.59. 18.E.3.56. 29.E.3.46. 39.E.3.9.*

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MEs si le feoffee fesoit estate al vncle pur terme de vie, ou en taile, sauant le reuersion, &c. ou que il fait done en taile al vncle, ou vn leas pur term de vie, le remainder ouster, &c. en cest cas le garrantie nest pas tout ousterment anient, mes est mis en suspence durant lestate que luncle ad. Car apres ceo que luncle est mort sans issue, &c. donques celuy en le reuersion, ou celuy en le remainder barreroit lissue en taile en son briefe de Formedon per le collateral garranty en tiel cas, &c. Mes autrement est lou luncle auoit auxy graund estate en la terre de le feoffee, a que le garBVt if the feoffee had made an estate to his vncle for terme of life, or in taile, sauing the reuersion, &c. or a gift in Tayle to the vncle, or a lease for terme of life, the remainder ouer, &c. In this case the warranty is not altogether taken away, but is put in suspence during the estate that the vncle hath. For after that, that the vncle is dead without issue, &c. then he in the Reuersion, or he in the Remainder shall barre the issue in taile in his writ of *Formedon* by the collaterall warrantie in such case, &c. But otherwise it is where the vncle hath as great estate in the land of the Feoffee to whom the Warrantie was made, as the Feoffee

CPur terme de vie, *ou en taile.* Here it appeareth (k) that by taking a (l) Lease for life, or a gift in taile, the warranty is suspended.

A man enfeoffeth a woman with Warranty, they intermarry and are impleaded, vpon the default of the husband the wife is receiued, shee shall vouche her husband &c. notwithstanding the warranty was put in suspence. (m) And so on the other side, if a woman infeoffe a man with warranty, and they intermarry and are impleaded, the husband shall vouch himselfe and his wife by force of the said warranty.

(n) An infant en ventre sa mere may bee vouched if God giue him a birth, and if not, such a one heire to the warranty, but he cannot be vouched alone without the heire at the Common Law, for Proces shall be presently awarded against him.

(k) *16.E.3. Vouch 87. 44.E.3.38. 26.E.3.56. 17.E.3.47. 10.E.3.30. 12.E.3.Counterple de vouch 42 14.E.3.Ibid.12*

(l) *6.E.2 vouch.257. 3.E.3. Ibid.101. 5.E.3 ibid.178. 18.E.3.52. 14.E.3.vouch.109. 31.E.3 ibid.25. 43.E.3.7. 44.E.3.38. 32.E.3.Voucher 102.*

(m) *4.E.2.Voucher 243.246*

(n) *Temps E.1.Gard.153. 31.E.1.briefe 873. 8.E.2.vouch.237. 11.E.3.ibid.13. 11.E.3.quar.imp.158. 38.E.3.7.& 29. 41.E.3.in dower. 9.H.6.24. Pl.Com. Stowells case per.Saunders & Browne*

CMes est mise en suspence. (o) Tenant in taile maketh a feoffment in fee with warranty, and disseiseth the Discontinuee, and dyeth seised, leauing assets to his issue. Some hold that in respect of this suspended Warranty and assets, the issue

(o) *21.E.3.36.a.& b. 38.E.3 21. 44.E.3.25. 45.E.3.title 32. 44.E.3 ibid.31. 33.E.3.ibid.4.*

issue in taile shall not bee remitted, but that the Discontinuee shall recouer against the issue in taile, and he take aduantage of his Warranty, if any he hath, and after in a Formedon brought by the issue, the Discontinuee shall barre him in respect of the Warranty and Assets; and so euery mans right saued.

ranty fuit fait, come le feoffee auoit ô luy, Causa patet.

hath himselfe. *Causa patet.*

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Or releasefait per luy oue garranty. Note a Warranty grounded vpon a Release hereof you shall reade before in this chapter.

8.E.2.Voucher 237.

Soit attaint de felony, ou vtlage, &c. Note according to Littleton here, there be two manner of Attainders, the one is after apparance, and that in three manners, by Confession, by Battell, or by Verdict, the other vpon Proces to bee Outlawed, which is an Attainder in Law. But (as hath beene said) there is a great diuersitie, as to the forfeiture of Land, betweene an Attainder of felony by Outlawry vpon an Appeale, and vpon an Inditement: for in the case of an Appeale, the Defendant shall forfeit no lands, but such as he had at the time of the Outlawry pronounced, but in case of Inditement, such as he had at the time of the felony committed, and the reason of this diuersity is euident, for that in the case of Appeale there is no time alledged in the Writ when the felony was done, and therefore of necessitie it must relate in that case only to the iudgement of the Outlawry: but in the case of Inditement, there is a certaine time alledged, and therefore in that case it shall relate to the time alledged in the Inditement when the felony was committed. But in the case of the Inditement there is also a diuersitie to be obserued, (o) for as hath beene said, it shall relate to the time alledged in the Inditement for auoyding of estates, charges, and incumbrances, made by the Felon after the felony committed, but for the meane profits of the land it shall relate only to the iudgement, aswell in this case of Outlawry as in other cases. And where Littleton saith, (Attaint de felony) if a man be conuicted of felony by verdict, and deliuered to the Ordinary to make Purgation (p) he cannot be vouched, for that the time of his purgation (if any should be) is vncertaine, and the Demandant cannot be delayed vpon such an vncertaintie, but the Tenant is not without remedy, for he may haue his Warrantia cartæ.

(o) 33.E.3.Forfeiture 30. 38.E.3.31. 3.E.4.25. 19.E.4.2.Pl.Com.488.b.

(p) 8.E.2. Voucher 237. Vid.38.E.3.29.b Simile.

Item si luncle apres tiel feoffment fait oue garrantie, ou release fait per luy oue garranty soit attaint de felony, ou vtlage de felony, tiel collateral garrantie ne barrer̃ my, ne greeuera lissue en le taile, pur ceo que per le attainder de felonie, le sanke est corrupt enter eux, &c.

Also if the vncle after such feoffment made with warrantie, or a release made by him with warrantie, be attaint of felony, or outlawed of felony, such collaterall warranty shall not barre nor grieue the issue in the taile, for this that by the attainder of felony, the blood is corrupted betweene them, &c.

Attaint. Of this word hath beene spoken in the second booke in the chapter of Villenage.

Vpon seuerall Attainders of Felonyes, there lye three seuerall writs of Escheate, viz. (*) First, when he hath iudgement to be hanged. Secondly, when hee is outlawed, Thirdly, when he abiureth the Realme.

(*) Dame Hales case in Pl.Com.fo.262.

(q) 8.E.3. Iudgement 225.

(q) The Defendant in an appeale of death did wage battaile, and was slaine in the field, yet Iudgement was giuen that he should be hanged, and the Iustices said, that it is altogether necessary, that such a Iudgement be giuen, for otherwise the Lord could not haue a writ of Escheate.

(r) 15.E.3. Petition 2.

(r) And in Eire it hath beene seene, that a man hath beene attainted after his death by presentment, &c. The difference betweene a man Attainted and Conuicted is, that a man is said Conuict before hee hath iudgement, as if a man bee conuict by Confession, Verdict, or Recreancy. And when he hath his iudgement vpon the Verdict, Confession, or Recreancy,

Recreancy; or vpon the Outlawry, or Abiuration, then is he said to be Attaint. And thus is the Law taken at this day, notwithstanding (f) some diuersitie of opinions in our bookes.

(f) 40.E.3.12 3.E.3. Corone 365. 8.E.2.ibid 393. 21.H.7.

If a Felon be conuicted by Verdict, Confession, or Recreancy, he doth forfeit his goods and chattells, &c. presently. (t) For where a reason hath beene yelded in our bookes, that the praying of his Clergie, was a refusall of the iudgement of the Law, and a slight in Law, and for that cause he forfeited his goods and chattells, that doth not hold, for if a man bee Conuict of petite treason, or murder, or any other crime for which he cannot haue his Clergie, yet by the very Conuiction he forfeiteth his goods and chattells before Attainder. And (u) Stanford (speaking of a Felon conuict by Verdict) saith, that he shall forfeit his goods, which he had at the time of the Verdict giuen, which is the conuiction in that case, and by the Statute of 1.R.3. cap.3. no Sherife, Baylife, &c. shall seise the goods of a Felon before he bee conuicted of the felony, whereby it appeareth, that the goods may be seised as forfeit after conuiction. And the (x) old Statute is worthy of noting, Prouisum est in curia nostra coram Iusticiarijs nostris quod de cetero nullus homo captus pro morte hominis vel alia felonia pro qua debet imprisonari, disseisietur de terris & tenementis vel catallis suis quousque conuictus fuerit. So as by a conuiction of a Felon, his goods and chattells are forfeited, but by Attainder, that is by iudgement giuen, his Lands and Tenements are forfeited, and his blood corrupted and not before.

(t) Dome Hales case, Vide supra. 8.H.4.2.

(u) Stanf.Pl.cor.fo.192. Lib.5.fo.110.Foxleys case. Vid 7.H.4 41. 1.R.3.ca.3.

(x) Statute de catallis felonum vet Magna Carta, fo.66. 2.part.

(y) If the partie vpon his Arraignement refuse to answer according to Law, or say nothing, he shall not be adiudged to be hanged, but for his contempt, to paine fort & dure, which worke no Attainder for the felony, nor forfeiture of his lands or corruption of blood. But in case of high treason if the party refuse to answer according to Law, or say nothing, hee shall haue such iudgement by attainder, as if he had beene conuicted by verdict or confession.

(y) Stanf.Pl.Cor.139.185.

¶ *Felony.* (*) Ex vi termini significat quodlibet capitale crimen felleo animo perpetratum, in which sence murder is said to be done per feloniam, and is so appropriated by Law, as felonice cannot be expressed by any other word. (a) And in ancient times this word (felonice) was of so large an extent as it included high treason; and therefore in our ancient bookes, by the pardon of all felonies, high treason, or counterfeiting of the great Seale, and of the Kings coine, &c. was pardoned. (b) But afterwards it was resolued, that in the Kings Pardon or Charter, this word (felony) should only extend to common felonyes, and that high treason should not be comprehended vnder the same, and therefore ought to be specially named. And yet that a pardon of all felonyes should extend to petite treason, wherefore by the Law at this day vnder the word (Felony) in commissions, &c. is included Petite treason, Murder, Homicide, burning of houses, Burglary, Robbery, Rape, &c. Chance-medly, se defendendo, and petite Larceny. (c) For such of these crimes for the which any shall haue this iudgement to be hanged by the necke till he be dead, hee shall forfeit all his lands in fee simple, and his goods and chattells: for Felony by chance-meddy or se defendendo, or petite Larceny, he shall forfeit his goods and chattells, and no lands of any estate of freehold or inheritance. And all felonyes punishable according to the course of the Common Law, are either by the Common Law, or by Statute. There is also a Felony punishable by the Ciuill Law, because it is done vpon the high Sea, as Pyracie, Robbery, or Murder, whereof the Common Law did take no notice, because it could not be tried by twelue men. If this Pyracy be tryed before the Lord Admirall in the Court of the Admiraltie according to the Ciuill Law, and the Delinquents there attainted, yet shall it worke no corruption of blood, nor forfeiture of his lands, otherwise it is if he be attainted before Commissioners by force of the Statute of (d) 28 H.8. By the expresse purview of that Statute about the end of the raigne of Queene Elizabeth certaine English Pyrats that had robbed on the Sea, Merchants of Venice in amity with the Queene being not knowne, obtained a Coronation pardon, whereby amongst other things the King pardoned them all felonies. It was (e) resolued by all the Iudges of England vpon conference and aduisement that this did not pardon the Pyracy, for seeing it was no felony whereof the Common Law tooke Conusance, and the Statute of 28.H.8. did not alter the offence, but ordaine a tryall and inflict punishment, therefore it ought to be pardoned specially, or by words which tant amount, and not by the generall name of Felony, and according to this resolution the delinquents were attainted and executed.

(*) Glanuill.lib.14 ca.25. Marlbr. ca.25.W.1. ca 15.
(a) 3.E.4.14. 18.E.4,10. 22.Ass 49. 1.E.3.13. Stanf Pl.Cor 102.E. Stanf Pl.Cor 102.E. 8 H.4.2.
(b) 22.Ass.49.

(c) Stanf prer.45.b. 16.E.3.Coron.116.& 3.E.3 Coron.302.

(d) 28.H.8.cap.15.

(e) Hill.2.Ia.Regis. Vid.Mich.7.& 8 Eliz. Dier 241. 14.Eliz.Dier 308.

Pirata cõmeth of the word πειρατης which signifieth a Rouer at sea. Attainder of heresie, or Præmunire worketh no corruption of blood, nor heresie, forfeiture of lands, but in case of Præmunire forfeiture of lands in fee simple, but not of lands in taile as formerly hath beene said. (f) By some Statutes it is said, Sur forfeiture de corps & de auoire, or Sub forisfactura omnium quæ in potestate sua obtinet, or to be at the Kings will, body, lands and goods, and the like, these are not extended to the losse of life or member, but to imprisonment, lands and goods. (g) But if an Act of Parliament saith, Feit iudgement de vie & member, or subeat iudicium vitæ vel membrorum, in that case iudgement of death shall be giuen as in case of felony, viz. that he be hanged

(f) Statute de Magna mensura tempore E.1. 35.E.1. de Carlisle 20.E.3 ca.4.
(g) W.2.Ca.34. Rot Parliam. 25.E.1. 1.E.2.de franc. prisonam. 14.E.3.cap.10. Stanf.Pl.Coron.30.31. 3.E.3.Coron.153. Brooke tit.Coron.203. 9.E.4.26.

hanged by the necke till he be dead, and consequently his bloud is corrupted, (as our Authour here saith) and shall forfeit as in case of Felonie.

(h) There is also a Court of the Constable and Marshall, who haue Conusance of Contracts, of Deedes of Armes, and of warre out of the Realme, and also of things touching warre within the Realme, which may not be determined or discussed by the Common Law, and also all Appeales of offences done out of the Realme, and they proceed according to the Ciuile Law: but these things more properly pertaine to another kind of Treatise, and therefore I shall speake no more thereof in this place, but onely for the satisfaction of the studious reader, to quote some Authorities of Law touching the iurisdiction of that Court, that he may haue some taste thereof.

In the same manner it is if a man be attainted of High Treason, the warrantie is also defeated.

¶ *Le sanke est corrupt enter eux, &c.* *Aptly is a man sayd to be attainted, attinctus, for that by his attainder of Treason or Felonie his bloud is so stained and corrupted, as first, His Children cannot be heyres to him nor to any other Auncestor, and therefore the warrantie cannot bind, for thereby heyres onely are to be bound.

Secondly, If he were noble or gentle before, he and all his children and posteritie are by this Attainder made base and ignoble, in respect of any Nobilitie or Gentrie which they had by their birth.

Thirdly, This corruption of bloud is so high, that regularly it cannot bee absolutely salued but by authoritie of Parliament: All which is implied in the same (&c.)

(h) *Bract. li.4. fo.248. 48.E.3.3.13.R.2.ca.2. Rot. Parl.21.Ric.2.nu.19.1.H.4. c.14.13.H.4.4.& 5.37.H.6 21.Rotul.Parl.8.R.2.nu.31. Forfeit.ca.32.Rot.Par.2.H.4 74.11.H.4.24.30.Hen.6.6. Stanf.Pl.Cor.65.Stat de Assignat.4.E.1.Br.Cor.196. Rot.Par. 2.H.6.nu 9. Rot. Par.5.H.4.nu.39. Rot.Vast. 9.H.4.nu.14 8,H.6. nu. 38. 21.E.4.17.b.Careby.10.H 7 & Vauasor.18.E.2. Quar.imp. 175.6.E.3.41.Pasc.14.E.3. in Scac.le Count.de Kents case. p.39.Ed.3.cor.Reg.Rot.49.le Count.de Lanc.cas.Rot.Parl. 28.E.3.nu.8.Mortmeins cas. Rot.Parl.28.E.3.nu.13. Le Countee de Arundels case.*

* *Stanf.li.3.Pl.Cor.195.b. 27.E.3.77.13.H.4.8. V.Lit.li.1.in the Chap. of Dower.*

Sect.746.747.

¶ *Le issue in Tayle poet enter.* And the reason is, For that by the attainder of the father, it is now in iudgment of Law but a release without warrantie, for albeit the warranty at the time of the Release was effectuall, yet it worketh no discontinuance vnlesse it discendeth vpon the Issue in Tayle, so as if it be defeated, extinct, or determined in the life of the tenant in Tayle, then no discontinuance is wrought: and so it is if Tenant in Tayle hath Issue, and releaseth to the Disseisor with warrantie, and after is attainted of felonie, and after obtaineth his pardon and dieth, the Issue in Taile may enter; * for the Pardon doth not restore the Bloud, as to the warranty nor maketh the Issue in that case inheritable to the warrantie. But if the Issue in Taile in that case had been attainted of Felonie in the life of his father, and obtained his Charter of pardon, and then his father had died, the issue cannot enter into the

¶ Item si Tenāt en Taile soyt disseisie, et puis fait release al Disseisor oue Garrantie en fee, et puis le Tenāt en taile est attaint, ou vtlage de felonie, et ad issue et mourust, en ceste case lissue en taile poet enter sur le Disseisor. Et la cause est, pur ceo que rien fait discontinuance ē ceste case forsque le Garrantie, et Garrantie ne poit discender al Issue en tayle, pur ceo que le sanke est corrupt perenter celuy que fist le Garrantie et Issue en Taile.

ALso if Tenant in Tayle bee disseised, and after make a Release to the Disseisor with Warranty in Fee, and after the Tenant in Taile is attaint or outlawed of felony, and hath issue & dieth; In this case the Issue in Taile may enter vpon the Disseisor: and the cause is, for this, That nothing maketh Discontinuance in this case but the warranty, and warranty may not discend to the Issue in Taile, for this, that the bloud is corrupt betweene him that made the Warrantie, and the Issue in Tayle.

* *27.E.3.77.1.E.3.4.6.E.3. 55.9.H.5.9.31.E.1.Discont. 17.46.E.3.Petit.30.26.ass.3 49.-Ass.4.29.ass.11.13.H.4. 8. 13.H.7.17. Pl.Com.in Walsinghams case.3.E.2.Discont.Br.64. Stanf.Pl.Cor.195 196. See in the Chapter of Tenant by the Curtesie, touching this matter.*

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Sect. 747.

¶ Car l'Garrãty touts foits demurt a l'Common Ley, et la Common Ley eſt, Que quant home eſt attaint ou vtlage de Felonie, quel vtlagarie eſt vn attainder en Ley, que le ſanke perenter luy et ſon fits, et touts auters queux ſerra dits ſes heires eſt corrupt, iſſint que riens per diſcent poit diſcender a aſcun q̃ poit eſtre dit ſon hẽ per le Common Ley. Et la Feme de tiel home que iſſint eſt attaint de felonie, ne ſerra iammes endow de les Tenements ſa Baron iſſint attaint. Et la cauſe eſt pur ceo que homes pluis eſchuerent de fait aſcuns felonies. Mes iſſue en Taile quant a les Tenements tayles neſt pas en tiel cas bar, pur ceo que eſt enherit per force de le Statute, et nemy p le courſe de Common Ley, et pur ceo tiel attainder de ſon pier ou de ſon anceſtor en le Tayle, ne luy ouſter de ſon droit p force de le taile, &c.

FOr the Warrantie alwayes abideth at the Common Law, and the Common law is ſuch, That when a man is attaint or outlaw'd of felony, which Outlawrie is an Attainder in Law, that the bloud betweene him and his ſonne, and all others which ſhall be ſayd his heyres, is corrupt, ſo that nothing by diſcent may diſcẽd to any that may bee ſaid his heyre by the Common Law: And the wife of ſuch a man that is ſo attaint ſhal neuer be indowed of the Tenements of her husband ſo attainted. And the cauſe is, For that men ſhould more eſchew to commit Felonies. But the Iſſue in Taile as to the Tenements tayled is not in ſuch Caſe barred, becauſe he is inheritable by force of the Statute, and not by the courſe of the Common law: And therefore ſuch attainder of his Father or of his Anceſtor in the Taile, ſhall not put him out of his Right by force of the Taile, &c.

Land in reſpect of the corruption of bloud vpon the Attainder of himſelfe. (h) And it is a generall rule, That hauing reſpect to all thoſe whoſe bloud was corrupted at the time of the attainder, the Pardon doth not remoue the corruption of Bloud nether vpward nor downward. As if there bee Grandfather, father, & ſon, & the Grandfather and father haue diuers other ſonnes, if the father bee attainted of Felonie and pardoned, yet doth the bloud remaine corrupted not onely aboue him and about him, but alſo to all his children borne at the time of his attainder. But in the caſe of Littleton, if Tenant in Taile at the time of his attainder had no Iſſue, & after the obtaining of his pardon had iſſue, that Iſſue ſhould haue bin bound by the Warrantie, for by the pardon he was as a new creature, Tanquam filius terræ, whoſe bloud vpwards remaine corrupted, but for the Iſſue had after the Pardon, he is inheritable to his Father, and if his father had Iſſue before the Pardon, and had iſſue alſo after and dieth, nothing can diſcend to the youngeſt, for that the eldeſt is liuing and diſabled. But if the eldeſt ſonne had died in the life of the father without Iſſue, then the youngeſt ſhould inherit.

(h) *Bract. li. 3 fo. 132 133. 276 & li. 5. 374. Brit. f. 215. b. Flet. li. 1 ca. 28.*

¶ *Le Garrantie demurt al Common Ley.* The Collaterall Warrantie is not reſtrained by the Statute of Donis Conditionalibus, but a lineall Warrantie is reſtrained by the Statute, vnleſſe there be Aſſets, as formerly at large hath beene ſayd. *Vi. Sect. 711. 713.*

¶ *Et la Feme de tiel home que iſſint eſt attaint, &c. ne ſerra iammes endow, &c.* It is to be obſerued, That the iudgment againſt a man for felonie, is, That hee bee hanged by the necke vntil he be dead, but implicatiuè, (as hath bin ſayd)

layd) he is punished first in his wife, That she shall lose her Dower. Secondly, In his children, That they shall become base and ignoble, as hath beene layd. Thirdly, That hee shall lose his posteritie, for his blood is stained and corrupted, that they cannot inherit vnto him or any other Auncestor. Fourthly, That he shall forfeit all his lands and tenements which hee hath in Fee, and which he hath in Tayle, for terme of his life. And fiftly, All his Goods and Chattels. And thus severe it was at the Common Law, and the reason hereof was, That men should feare to commit felonie, Vt pœna ad paucos, metus ad omnes perueniat. And it is truly sayd, Etsi meliores sunt quos ducit amor, tamen plures sunt quos corrigit timor. And so it is à fortiori in case of High Treason. But some Acts of Parliament have altered the Common Law in some of these poynts: First, By the Statute of Donis conditionalibus, Lands intailed were not forfeited neither for Felonie nor for Treason, but for the life of Tenant in Tayle: This Act was made by King Edw. the first, who (as our Bookes (i) speake) was the most sage King that euer was: (k) and the cause wherefore this Stat. was made, was to preserue the Inheritance in the blood of them to whom the gift was made, notwithstanding any attainder of Felonie or Treason. And this Act in Hystorie is called Gentilitium municipale, For that by this Act the families of many Noblemen & Gentlemen were continued & preserued to their posteritties. And this Law continued in force from the thirteenth yere of King Edward the first, vntill the (l) twentie sixth yeare of King Henrie the eighth, when by Act of Parliament Estates in Taile are forfeited by attainder of high Treason. But as to Felonies (wherevnto our Author hereafter speaketh) the Statute of Donis Conditionalibus doth yet remaine in force, so as for attainder of Felonie Lands or Tenements entailed are not forfeited, but onely (as hath beene sayd) during the life of Tenant in Tayle, but the Inheritance is preserued for the Issues.

(i) 5.E.3.14. 9.E.3.22.
(k) 7.H.4.32. 19.H.6.71. See Lit.lib.1.ca. Dow. Sect.55

(l) 26.H.8.ca.13. 33.H.8. ca.20. 5.E.6.ca.11.

(m) Stanf. Pl. Cor. 195.

(m) The wife of a man attainted of high Treason or petit Treason, shall not bee received to demand Dower, vnlesse it be in certaine cases specially prouided for. But the wife of a person attainted of Misprision of Treason, Murther, or Felonie, is dowable since our Author wrote, (n) by the Statute in that case made and prouided, which is more fauourable to the woman than the Common Law was.

(n) 1.E.6.ca.13. 5.E.6.c.11 5.El.ca.1. & 11. 18.El.ca.1. 12.H.4.3. V. Sect.55.

(o) If a Seigniorie be granted with warrantie, and the Tenancie escheats, the Seigniorie whereunto the Warrantie was annexed is extinct, and consequently the Warranty defeated, and it shall not extend to the Land, & sic in similibus.

(o) 6.H.4.1.45.E.3. Vouch. 72. Pl. Com. 292. 16.Edw.3. Age 46. 18.H.3. Vouch. 281. 23.E.3 Garr. 77. See in the Chapter of Villenag Sect.209.

If a Collaterall Auncestor release with warrantie, and enter into Religion, now the warranty doth bind; but if after he be deraigned, now it is defeated.

Sect. 748.

LIttleton hauing spoken in what Cases warranties may be defeated and extinguished by matter in Law; now he sheweth how a warrantie may bee discharged or defeated by matter in Deed: and her vpon he putteth an example of a Release in 3 seuerall manners:

First, By a release of all warranties.

Secondly, By a Release of all Couenants reall.

And thirdly, By a Release of all demands.

Vid Lib.8.fo.153.154. Altham's Case. 46.E.3.2. 45.E.3.23. Vid. before in the Chapter of Releases. Sect. 508

(q) If a man make a gift in Taile with warranty, this warrantie is also in ayed, and therefore a Release made by Tenant in Tayle of the warrantie, shal not bar the issue, no more than his Release shal bar the issue to bring an attaint vpon a false verdict, or a writ of error vpõ an erroneous

(q) 14.Ass pl.2. 3.Eliz. Dyer. 188.9.F.4.32.b

CItem si Tenant en le Taile enfeoffa son Vncle, l' quel enfeoffa vn auter en fee oue garr̃ &c. si apres l' feoffee p̃s fait release a s̃ Vncle touts manners des garranties, ou touts manners de Couenants reall, ou touts manners de dões, y tiel Release le Garrantie est extinct. Et si le Garrantie en cel case soit pleade enuers le heire en taile, que porta son Briefe de

ALso if Tenant in Taile infeoffe his Vncle, which infeofs another in fee with warr̃, if after the feoffee by his Deed releas to his Vncle all manner of Warranties, or all manner of Couenants realls, or all manner of Demaunds, by such Release the Warrantie is extinct. And if the Warranty in this case bee pleaded against the heire in Tayle that bringeth his writ of *Forme-*

de Formedō p barrer le heire de son action, si lheire auoit le dit releas & ceo pledast, il defetera le plee en barre, &c. Et mults auters cases et matters y sont, p quix hōe poit defeater garrantie, &c.

don, to barre the heire of his action, if the heire haue and plead the said release, &c. he shall defeat the plee in barre, &c. and many other cases and matters there be whereby a man may defeate a warrantie, &c.

iudgement giuen against the Father, nor his gift can barre the time of the Deeds that create the estate taile, nor of any other Deede necessary for defence of the title.

¶ *Apres le feoffee releſſa.* Littleton here putteth his case where one is bound to warrant: put the case (r) then that two make a Feoffment in fee, and warrant the land to the Feoffee and his heires, and the Feoffee releaſe to one of the Feoffors the warranty, yet hee shall vouche the other for the moytie. And so it is if one infeoffe two with warranty, and the one releaſe the warranty, yet the other shall vouch for his moytie.

(r) 45.E.3.23.

¶ *Si le heire auoit le dit releaſe, &c.* Here it appeareth that the releaſe being made to the vncle being his Ancestor, the Deed doth after the decease of the vncle belong to him, and therefore he cannot plead it, vnleſſe he sheweth it forth.

¶ *Et mults auters caſes & matters y ſont per queux home poet defeater garranty, &c.* As namely by a Defeasance, as other things execu-

41.E.3.17. Pl.Com. in Browning's case.

tory may. Also a Warranty may loſe his force by taking benefit of the same. In a Præcipe the Tenant voucheth, and at the Sequatur ſub ſuo periculo, the Tenant and the Vouchee make default, whereupon the Demandant hath iudgement against the Tenant. And afterwards the Demandant brings a Scire facias against the Tenant to haue Execution, in this case the Tenant may haue a Warrantia Cartæ And if in that case a ſtranger had brought a Præcipe against the Tenant, he might haue vouched againe, for by the iudgement giuen against the Tenant the warranty loſt not his force, but if the Tenant had Iudgement to recouer in value against the Vouchee, he should neuer vouche againe by reaſon of that warranty, becauſe hee had taken aduantage of the warranty. And it is to be obſerued that vpon the proces of Sommoneas ad warrantizandum, if the Sherife returne the Vouchee ſummoned and he make Default, the Tenant ſhall haue a Capias ad valentiam, but if he returne that the Vouchee had nothing, then after the ſicut alias & plures a ſequatur ſub ſuo periculo ſhall iſſue, and there if the Vouchee make default, the Tenant ſhall not haue Iudgement to recouer in value, for hee was neuer ſummoned, and it appeareth of Record that he hath nothing, but in the Capias ad valentiam it appeareth that he had Aſſets, and he had beene ſummoned before. But in ſome ſpeciall caſes there ſhall be two recoueries in value vpon one Warrantie. As if a Diſſeiſor giue lands to the husband and wife, and to the heires of the husband, the husband alieneth in fee with warranty and dieth, the wife bringeth a Cui in vita, the Tenant vouche and recouereth in value if after the death of the wife, the Diſſeiſee bring a Præcipe against the Alienee, hee shall vouch and recouer in value againe.

(ſ) So it is where the wife bringeth a writ of Dower against the Alienee hee shall recouer in value, and after her death he ſhall recouer in value againe, vpon the ſame warrantie.

(ſ) 45.E.3.Voucher 72.

In the ſame manner it is if a man be ſeiſed of a rent by a defeaſible title, and releaſeth to the Tenant of the land all his right in the land, and warranteth the land to him and his heires, if he be impleaded for the rent, he ſhall vouch & recouer in value for the rent, and if after he be impleaded for the land, he ſhall vouche and recouer in value againe for the land: but in theſe and the like caſes, the reaſon is in reſpect of the ſeuerall eſtates recouered, but for one and the ſame eſtate he ſhall neuer recouer but once in value, and though the land recouered in value be euicted, yet ſhall he neuer take benefit of that warranty after. And as Warranties may bee defeated in the whole, ſo they may be defeated as to part of the benefit that may be taken of the ſame. (r) As hee that hath a warranty may make a Defeaſance not to take any benefit by way of Voucher: In the like manner that he ſhall take no aduantage by way of Warrantia Cartæ or by way of Rebutter.

(t) 7.H.6.43. 33.Aſſ. 13.E.3. Gar.24.25.37. 22.H.6.51. 8.H.7.6.

Sect. 749.

THen Littleton sheweth that in the same manner that a collaterall warrantie may be defeated by matter in Deede, or by matter in Law, so may to all intents and purposes a lineall warrantie, whereof hee putteth an example of a lineall warranty and assets.

¶ *Et vn lineal garranty, &c. ouesque ceo que assets a luy discendist, &c.* Here it appeareth by Littleton, that a lineall warranty and assets is a good plea in a Formedon in the Discender; wherein it is to be knowne that if Tenant in taile alieneth with warranty, and leaue assets to discend, if the issue in taile doth alien the assets, and die, the issue of that issue shall recouer the land, because the lineall warranty discendeth only to him without assets, for neither the pleading of the warranty without the assets, nor the assets without the warranty is any barre in the Formedon in the Discender. But if the issue to whom the warranty and Assets discended had brought a Formedon, and by Judgement had beene barred by reason of the warranty and Assets. In that case albeit he alieneth the Assets, yet the estate Tayle is barred for euer: for a barre in a Formedon in the Discender, which is a writ of the highest nature that an issue in tayle can haue, is a good barre in any other Formedon in the Discender, brought afterwards vpon the same gift.

Temps E.1. Tart. 89. 34. E.1. this 88. 11. E.2. ibid. 83. 4. E.3. 24. 5. E.3. 14. 40. E.3. 9. 14. H.4. 39. 24. H.8. taile Br. 33. 4. Mar. Dier 139. Lib. 10 fo. 37. 38. in Mary Portingtons case.

¶ Et est ascauoir, que en mesme le maner come garranty collateral poit estre defeate pur matter en fait, ou en ley, en mesme le maner poit lineal garranty estre defeat, &c. Car si heire en taile porta briefe de Formedon, & vn lineal garranty, de son ancester enheritable per force de le taile, soit plede enuers luy, oue ceo que assets a luy discendist de fee simple, que il ad per mesme launcester que fist le garranty, si heire que est demandant poit annuller, & defeater le garrãty, ceo suffist a luy. Car le discent des auters tenements de fee simple ne fait riens p barrer heire sans le garranty, &c.

AND it is to be vnderstood, that in the same manner as the collaterall Warranty may bee defeated, by matter in Deed, or in Law; In the same manner may a Lineall warranty be defeated, &c. For if the heire in taile bringeth a writ of *Formedon*, and a lineall warranty of his Ancestor inheritable by force of the Tayle, be pleaded against him, with this that Assets discended to him of fee simple, which he hath by the same Ancestor that made the warrantie, if the heire that is demandant may annull and defeate the warranty, that sufficeth him; For the discent of other tenements of fee simple maketh nothing to barre the heire without the warranty, &c.

¶ *A Toy mon fitz, &c.* Here our Author calleth (as many times in these bookes hee hath done) not only his sonne Richard, but euery student of the Law to be accounted his sonne, and worthily, for that seeing our Author had the honour to be in his time the Father of the Law, and all good students in the Law iustly account themselues the sonnes of the Law, (for otherwise they are not worthy of the profession) our author, as a carefull and prouident Father, as it hath manifestly appeared, gaue excellent instructions in these his bookes both to his owne son, and to his adopted sons, to make them from age to age the more apt and able to vnderstand the arguments and reasons of the Law.

¶ Ore ieo ay fait a toy mon fits trois liures.

NOw I haue made to thee my sonne three bookes.

¶ Le primer Liure est de Estates que homes ount en terres ou tenements: cestascauoire,

The first Booke is of Estates which men haue in Lands and Tenements: That is to say,

De Tenant en fee simple	Cap. 1
De Tenant en fee taile	2
De Tenant en fee taile apres possibilitie dissue extinct	3
De Tenant p le Curtesie Dengleterre	4
De Tenant en Dower	5
De Tenant a terme de vie	6
De Tenant pur terme des ans	7
De Tenant a volunt per le Common Ley	8
De tenant a volunt per custome del manner	9
De Tenant per le Verge.	10

Le second Liure.

De Homage	Cap. 1
De Fealtie	2
De Escuage	3
De seruice de Chyualer	4
De Socage	5
De Frankalmoigne	6
De Homage auncestrel	7
De Grand Serjeantie	8
De Petit Serjeantie	9
De Tenure en Burgage	10
De Tenure en Villenage	11
De Rents	12

¶ Et ceux deux petits lieurs ieo ay fait a toy pur le melioz entender de certaine Chapters de les antiēt Liures de Tenures.

And these two little Bookes I haue made to thee for the better vnderstanding of certain Chapters of the antient Booke of Tenures.

¶ *Meliour entender, &c.* And these Institutes haue I collected and published to the end that these three Bookes of our Author may be the better vnderstood of the studious Reader.

¶ *Antient Liure des Tenures.* This Booke may well be accounted antient, for it was composed in the raigne of King Edward the third, (as Iustice Fitzherbert saith) by a graue and discreet man. *Fitz. in his Preface to his N. B.*

Le tierce Liure.

De Parceners solonque l'course del Common Ley	Cap. 1.

Epilogus.

De parceners solonque le Custome Cap. 2
De Jointenants 3
De Tenants en Common 4
De Estates de terres et tenements & Condition 5
De Discent que tollent entries. 6
De continual Claime 7
De Releases 8
De Confirmations 9
De Attornements 10
De Discontinuances 11
De Remitters 12
De Garranties. 13

Epilogus.

IEo ne voile enprender ne presumer, &c. Here obserue the great modestie and mildenesse of our Author, which is worthie of imitation, for nulla virtus, nulla scientia locum suum & dignitatem conseruare potest sine modestia. And herein our Author followed the example of Moses, who was a Judge, and the first writer of Law, for he was Mitissimus omnium hominum qui fuit in terris, as the holy Historie testifieth of him.

¶ *Les arguments & les reasons del Ley, &c.* Ratio est anima Legis, for then are we sayd to know the Law, when we apprehend the reason of the Law, that is, when we bring the reason of the Law so to our owne reason, that we perfectly vnderstand it as our owne, and then and neuer before, we haue such an excellent and inseperable propertie and ownership therin, as we can neither lose it, nor any man take it from vs, and will direct vs (the learning of the Law is so chayned together) in many other Cases. But if by your studie and industrie you make not the reason of the Law your owne, it is not possible for you

¶ E T laches mon fits, Que ieo ne voil que tu croies, que tout ceo q̃ ieo ay dit en les dits liures soit Ley, car ieo ne ceo voile enprender ne presumer ꝑ moy. Mes de tiels choses que ne sont pas Ley enquires, et apprendres de mes sages Masters apprises ẽ la Ley. Nient meins coment que certaines choses, queux sont motes et specifies en les dits Liures, ne sont pas ley, vncore tielx choses ferra toy plus apt et able de entender et apprender les arguments, et les reasons di ley, &c. Car p les arguments et les reasõs en la Ley home plus toft auiendra a le cer-

AND know my son, That I would not haue thee beleeue, that all which I haue sayd in these Bookes is Law, for I will not presume to take this vpon me, but of those things that are not Law, enquire & learne of my wise masters learned in the law; notwithstanding albeit that certaine things which are mooued & specified in the sayde Bookes, are not altogether Law, yet such things shall make thee more apt, and able to vnderstand and apprehend the Arguments and the reasons of the Law, &c. For by the Arguments and Reasons in the Law, a man more sooner shall come to the certain-

certaintie & a la conuſans de la ley. tie and knowledge of the Law.

Lex plus laudatur quando ratione probatur.

and therefore argumentari & ratiocinari are many times taken for one. And that our Author may not ſpeake any thing without Authority (which in theſe Inſtitutes we haue as we take it manifeſted) his opinion herein alſo agreeth with that of the learned and reuerend chiefe Iuſtice of the Court of Common pleas Sir Richard Hankford, (y) Home ne ſcauera de quel mettal vn campane eſt, ſi ne ſoit bien bate, ne le ley bien conus ſans diſputation. And another ſaith, (*) Ieo aye diſpute ceſt matter pur la apprender la ley. So as our Author hath made a moſt excellent Epilogue or Concluſion with a graue aduice and councell, together with the reaſon thereof, which all good ſtudents are to know and follow, and with leiſure and ſequi I will conclude our Authors Epilogue.

long to retaine it in your memorie. And well doth our Author couple arguments and reaſons together, Quia argumenta ignota & obſcura ad lucem rationis proferunt & reddunt ſplendida:

(y) 11.H.4. 37.

(*) 41.E.3.22. Kyton. Vid. Sect.377.

¶ *Lex plus laudatur quando ratione probatur.*

This is the fourth time that our Author hath cited verſes. Vid.Sect.384.443.550.

When I had finiſhed this worke of the firſt part of the Inſtitutes, and looked backe and conſidered the multitude of the concluſions in Law, the manifold diuerſities between caſes and points of learning, the variety almoſt infinite of Authorities, Ancient, Conſtant, and Modern, and with all their amiable, and admirable conſent in ſo many ſucceſſions of ages, the many changes and alterations of the Common Law & additions to the ſame, euen ſince our Author wrote, by many Acts of Parliament, and that the like worke of Inſtitutes had not bin attempted by any of our profeſſion whom I might imitate, I thought it ſafe for me to follow the graue and prudent example of our worthy Author, not to take vpon me, or preſume that the reader ſhould think, that all that I haue ſaid herein to be Law: yet this I may ſafely affirm, that there is nothing herein, but may either open ſome windowes of the Law, to let in more light to the ſtudent by diligent ſearch to ſee the ſecrets of the Law, or to moue him to doubt, & withall to enable him to inquire, & learne of the Sages, what the Law together with the true reaſon thereof in theſe caſes is: Or laſtly vpon conſideration had of our old Bookes, Lawes, and Records, (which are full of venerable Dignity and Antiquitie) to finde out where any alteration hath beene, vpon what ground the Law hath beene ſince changed; knowing for certaine, that the Law is vnknowne to him that knoweth not the reaſon thereof, and that the knowne certaintie of the Law is the ſafety of all. I had once intended for the eaſe of our Student to haue made a Table to theſe Inſtitutes, but when I conſidered that Tables and Abridgements are moſt profitable to them that make them, I haue left that worke to euery ſtudious Reader. And for a farewell to our Iuriſprudent I wiſh vnto him the gladſome light of Iuriſprudence, the louelineſſe of Temperance, the ſtability of Fortitude. and the ſoliditie of Iuſtice.

FINIS.

Errata.

FOlio 2.a. Linea 41. For *Gratiuta*, read *Gratuita*. fo.3.b. lin.2. *for* no heire, *read* no heire but of his body. l.18. *omit*, Baſtards. l.41. *after* coſens, *adde*, Mes. l.58. for *brugam*, r. *brigam*. l.62. cauiat, *r.* caueat. f.4.a.l.52. *after* Lammas *adde* to her. *and to the notes in the marg. there*, add *Vi.li.1. f.87. per Walmſl.* f.4.b.l.8 *quarum*, r. *quare*. l.49. *for* of higher, *read* or higher. f.5.b.l.35. *metiebant*, r. *metebant*. l.41. *Berqualia*, r. *Berquarium*. l.44. after *Domeſday*, adde, It ſignifieth alſo, & more legally, a Sheep-coat, of the French word *Bergerie*. l.50. *Arpeu*, r. *Arpen*. l.61. lug. *r.* Ing. f.6.a. l.29. *for* where, *r.* whereof. f.7.b.l.6. *Audigauiæ*, r. *Andiganiæ*. f.9. b.l.38. in writ, *r.* in the writ. f.10.a.l. 1. oweetie, *r.* oweltie. fol.13.a.l.34. ſtall, *r.* ſhall. l.19. in marg. 19. *Et*. r. 19. *E*. 1. f.13.b.l.16. ſeuerſl, *r.* ſeuerall. l.23. with, *r.* which. f.15.a.l.5. as, *r.* or. f.15.b.l.16. in marg. 23. *E*. 3. r. 25. *E*. 3. f.16.b. l.44. *for* the degree, *r.* vnder the degree. f.17.a. l.43. *ſeitus*, r. *ſeiſitus*. fo.18.a.l.41. two ſimples, *r.* two fee ſimples. f.20.a l.11. *in the text*, their, *r.* her. fo.21.a l.6. *after* for euer, *adde* It hath been holden that. l.10. *after* expectant, *adde* but *Vid. lib. ?. fo* 154. *b.* otherwiſe reſolued, *vt patet ibi*. f.21.b.l.23. *for* not the, *r.* not of the. fo.22.b.l.6. *in the text*, Donors, *r.* Donees. f.23.b. l.18. *in the text, for* Iſſue, *r.* Iſſues. l.34. ib. 21. *E*. 3. r. 31. *E*. 3. fo.24.a. l.49 and to exclude, *r.* and not to exclude. f.26.b.l.40. *Matilda*, r. *matildæ*. l.41. *proereat*, r. *procreatæ* f.30.a.l.44. But, *r.* By. l.13. in marg. to 29. *E*. 3. adde *f.*27. f.31.a.l.31. *tallegys*, r. *tallagys*. f.31.b.l.30. Northampt. *r.* Northumb. l.48. generall, *r.* ſpecial. f.32.a.l.55. *omit*, during the couerture. lin.22. in marg. *Hillingſtons*, r. *Lillingſtons*. f.33.a.l.36. *iun'*, r. *iunior*. *præmer'*, r. *promerere*. *vitlum ſuſtin'* r. *virum ſuſtinere*. l.37 *viz*. r. *viri*. l.7. in marg. 13. *E*. 1. *Dower*. r. 3. *E*. 1. *Dower*. 172. f.34.b.l.26. habitatirn, r. habitation. l.29. riuen, *r.* driuen. fol.35.a.l.1. this companions, *r.* his companions. f.38.a.l.18. to ends, *r.* to no end. f.39.a.l.59. he, *r.* ſhe. f.42.a.l.6. of, *r.* or. l.8. foreiture, *r.* forfeiture. f.44.a.l.4. in marg. 3. *Ia*. r. 1. *Ia*. f.44 b.l.31. owne, *r.* one. l.36. tenant *r.* tenants. f.46.a l.3. for, *r.* of. l 25. *Thrning*, r. *Thirning*. f.46.b.l.60. caſe, *r.* leaſe. f.47.a.l.11. chattell, *r.* cattell f.47 b.l.17. if they diſtreyned, *r.* if they be diſtreyned. f.48.a.l.30. deuiſe, *r.* demiſe. f.48, b.l.45.46 *for* make writing of leaſe, *r.* make a writing of a leaſe f.49.a. l.15. *omit*, in. l.55. liuery the, *r* liuery to the. f.49 b.l.4. remainder, *r* remainders. l.50. *omit*, as. f.50.b.l.9. *paripbraſis*, r. *periphraſis* f.53.b l.10. fell, *r.* ſell. f.54.a. l.45. and term, *r.* and the terme. f.58.b. l.13. diſſeiſors, *r.* diſſeiſees. f.59.b.l.33. concluſion, *r.* concluſion. fo.61.b. l.vlt. in marg. to *cap.*67. adde *&* 69. f.62.a l.3. *appruatore plegiatu*, r. *appruatore cognitus plegiatus*. l.4. fore *lectius*, r. *Clericus*. *moribus & legibus*, r *communioribus legibus*. l.7. *puer*, r. *piger*. fol.63.a.lin.33. *libris*, r. *libri*. f.65.a.l.26. ſaith, *r.* faith. f.66.a.l.23. rcords, *r.* records. f.67.a. l.vlt. *for* they within, *r* they be within. 67.b. *the latter part of the Text of the* 91. Sect. *is to be added*. l.2. *ſædum*, r. *feodum*. f.68. l.37. *ſiue*, r. *ſine*. f.69.a.l.59. theſe, *r.* this. f.71 a. l.20. *diuinet*, r. *dimicet*. l 41. *omit* that. fo.71 b. l 47. but, *r.* and. f.73.b.l.2. *in the text*, were by, *r.* were giuen by. f.74 b l.18.19 *fædum*, r *feodum*. f.75.b. l.29.34. 56. *fædi*, r. *feodi*. f 77.b.l.24. ſaid office, *r.* ſayd offices. f.78. b.l 6. in marg. to 27 *H* 8. add *fo*. 10 f.80.a.lin 28 in the text, *matrimonium*, r. *matrimonio*. f.81.a.l.11. in marg. *ca*. 3. r. *ca* 1. f.83.b.l 6. *fædũ*, *r. feodum*. l 39. by, *r.* of f.84.a.l.31. of, *r.* to. f.85.b.l.11. Sxe, *r* Six. lin.27. Sheep-men, *r* Sheepe men. f 88.b.l.10. *ſæcus*, r. *cæcus*. l.43. *for* a, *r* of. f.90.a.lin. vlt. in marg to *Sect*. adde 740 f.91.b. l.3. as preſently as conueniently may, *r.* as preſently and as conueniently as he may. fo.93.b.l.vlt. voluntaries, *r.* votaries. f.94.a l.29. Dioceſſe, *r.* dioceſſes. and l vlt for *fædum*, r. *feodum* fol.95 a. l.18. take ſucceſſion, *r.* take in ſucceſſion. *ſic*, r. *ſiil*. f.97.a. l.2. in marg to 33. *H*. 6. adde, *fo*. 6. l.30. put out the * before *Stephen*, and place it, l.28. *before* And of them. f.100 a. l.4. for *medio* r. *medÿ*. f.100. b.l 9. to the diſherſon, *r.* or the diſherſon. f.107. a.l.44. *Seriantiæ*, r. *Seriantiam*. f.110.a.l.39. *Comities*, r. Counties. f.111.a.l.52. of deuiſor, *r.* of the deuiſor. f.114.b.l.30 ceſſor, *r.* ceſſer. l.44 ſuſpenſation, *r.* ſuſpenſion. f.115.a.l.9. to be a formdon, *r.* to a formdon. fo.116.a.l.43.47. bound, *r.* bond. 119.b. l.15. *for* may claime, *r.* may not claime. f.120.b. l.38. *coppe*, r. *cep*. f.121.a.l.55. tenure, *r.* tenancy. f.122.b. l.41.46. *vtlegat*, r. *vtlagat'*. f.123.a.l.29. *dominus*, r. *dominum*. f.128 b.l.19. vntill and a good, *r.* vntill a good. f.129. a.l.58. indelibilitie, *r.* indebilitie. l.59. Priors, *r.* Prioreſſe. f.130.b.l.2 *for* garniſh, *r.* garniſhee. f.131.b.l 413. to 13. *R*. 2. adde, *ca*. 16. f.133.a.l.11. *aſſeri*, *tidem*, r. *aſſerit idem*. f.133.b.l.40. *quandaque* r. *quandoque*. fol.135.a l.17. diſcouenables, *r.* couenables. l.48. *aut*, r. *&*. f.138.b.l.44. be, *r.* is. f 141.b.l.27. *vt*, r. *&*. f.142.a.l.12. *liberas*, r. *libras*. l.13. *Cometi* r. *Comiti*. 146.a.l.7. in mar. in *H* 8. *r.* in 11. *H*. 8. f.146.b.l.35. *for* grantee, *r.* grantor. f.148.b.l.50. is wholly apportioned, *r.* is to be apportioned. fol.150.a.l.47. *omit*, and ſo it is. f.150.b.l.13, of the grantee, *r.* of the grantor. f.155.a. l.50. bound, *r.* bond. fo.155.b. l.27.28. and this, *r.* and how this. fol. 157.a. l.53, it not, *r.* it is not. f.157.b. l.21. change, *r.* charge. l.38. pincipal, *r.* principal. l.39. one, *r.* owne. f.158 a.l. vlt. tie, *r.* trie. fol.159.a.l.44. Cambr. *r.* Cambridge. f.159.b. l.19. *Clareden*, r. *Claredon*. l.15. in the text, *auoit*, r. *nauoit*. fol. 160. b.l.13. as the poynt, *r.* as to the poynt. f.164 a.l.5. of full age, *r.* within age. f.164.b.l.13. in mar. to 2. *H*. 6. add *fo*. 11. f.165.b.l.9. *in the text*, Aunt, *r.* Aunts. fol.172.a.l.36. ſhal be allowed, *r.* ſhal not be allowed. f.176.b.l.3. remant, *r.* remnant.

Errata.

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A TABLE TO The First Part Of the INSTITVTES *of the Lawes of* ENGLAND, Digested into Alphabeticall Order and Method.

Prodesse, non Obesse.

Illud ex animo fiet, hoc præter voluntatem accidet.

1630.